



ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 411

DATE: Thursday, November 12, 1992

BEFORE:

A. KOVEN Chairman

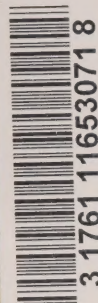
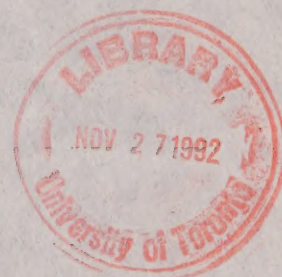
E. MARTEL Member

FOR HEARING UPDATES CALL (COLLECT CALLS ACCEPTED) (416) 963-1249

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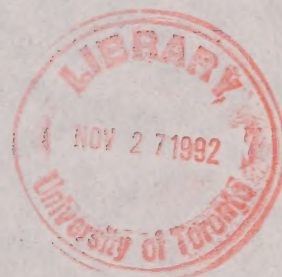
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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of a Notice by The Honourable
Jim Bradley, Minister of the Environment,
requiring the Environmental Assessment
Board to hold a hearing with respect to a
Class Environmental Assessment (No.
NR-AA-30) of an undertaking by the Ministry
of Natural Resources for the activity of
Timber Management on Crown Lands in
Ontario.


Hearing held at the Civic Square,
Council Chambers, 200 Brady Street,
Sudbury, Ontario on Thursday, November
12, 1992, commencing at 9:00 a.m.

VOLUME 411

BEFORE:

MRS. ANNE KOVEN
MR. ELIE MARTEL

Chairman
Member



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A P P E A R A N C E S

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APPEARANCES (Cont'd):

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I N D E X O F P R O C E E D I N G S

<u>ARGUMENT:</u>	<u>Page No.</u>
Freidin (in reply) cont'd	70010

1 ---Upon commencing at 9:00 a.m.

2 MADAM CHAIR: Good morning, Mr. Freidin.
3 We're ready to begin whenever you are.

4 Shall I ask you if you're going to take
5 the whole day?

6 MR. FREIDIN: Yes.

7 MADAM CHAIR: Are you?

8 MR. FREIDIN: I hope not.

9 MADAM CHAIR: Before we begin, Mr. Beram
10 has given me a note, we gave the wrong exhibit number
11 to something. And so, for the record, in a letter
12 dated September 23rd, 1992 to all the full-time parties
13 I gave a supplementary witness statement from Grand
14 Council No. 3 the Exhibit No. 2322, and I understand
15 now that should be changed to -- okay, what is it?

16 In Volume 401, October 26, 1992, on page
17 68802, a letter dated October 26th, 1992, on an
18 undertaking from MNR reply, signed by Kate Murphy, was
19 made Exhibit 2322.

20 The second one, the undertaking signed by
21 Kate Murphy should become Exhibit 2323.

22 Go ahead, Mr. Freidin.

23 MR. FREIDIN: Madam Chair, I want to just
24 begin by going back to the submission I made yesterday
25 and I'm not going to repeat it.

1 MADAM CHAIR: Never look back, Mr.
2 Freidin.

3 MR. FREIDIN: I'm sorry, I didn't hear
4 you.

5 MADAM CHAIR: Mr. Martel and I said,
6 never look back, just keep going straight ahead.

7 REPLY ARGUMENT BY MR. FREIDIN (Cont'd):

8 You recall yesterday just near the end of
9 my submissions regarding environmental assessment
10 matters I addressed two submissions Ms. Seaborn had
11 made, one being an indication to the Board that you can
12 be as specific or as general as you want to be in your
13 decision in terms of interpreting the legislation; and
14 the second submission being related to Ms. Seaborn's
15 submission to you that you should link decisions to the
16 facts with some precision but you are not bound to do
17 that.

18 Ms. Seaborn approached me yesterday and
19 she advised that, to make sure there is no
20 misunderstanding about what she was submitting to the
21 Board, she has asked me to indicate to you, or she's
22 said it would be appropriate for me to indicate to you
23 that she is in agreement with the submissions that I
24 made to you in relation to both those matters.

25 The subject matter I would like to begin

1 with this morning is item No. 4 and, as you see in my
2 submission, items 4, 5 and 6 really become a package in
3 effect. And dealing with the first one which has I
4 think become referred to throughout the hearings as the
5 guideline approach or the adequacy of it.

6 I want to summarize for you the OFAA
7 (sic) position on this matter that I intend to respond
8 to this morning. Oh, I'm sorry, if I said OFIA, I
9 meant the OFAH/NOTOA Coalition.

10 Mr. Hanna made submissions to you that
11 for this Board to approve the guidelines it must decide
12 on the adequacy or the sufficiency of the following
13 matters: One, is the prediction methodology implicit
14 in the guidelines reasonable; two, the technical
15 soundness of the net effects that are predicted to
16 arise from the guidelines; three, the Board must decide
17 on the acceptability of balancing advantages and
18 disadvantages of the preferred alternative and that the
19 preferred alternative, which are the prescriptions in
20 the guidelines, is appropriate across the area of the
21 undertaking and that that would be the effect of your
22 decision if you approve the guidelines.

23 You'll find those submissions are
24 contained in the Coalition's argument at Volume 405
25 page 69305 to 306.

1 The Ministry of Natural Resources does
2 not agree that that is the test as to whether in fact
3 the guideline approach or the use of guidelines is
4 appropriate; rather, MNR submits that the determination
5 of the question is whether the Board believes that the
6 guidelines are based on an adequate scientific basis
7 and that their application will be determined by people
8 who know how to apply them, that the Board is confident
9 that those individuals will apply those guidelines and
10 the direction in them in a proper manner.

11 MR. MARTEL: Could you repeat that last
12 part?

13 MR. FREIDIN: That the people who will
14 apply those guidelines will do so in a proper manner,
15 that the application of those guidelines using the
16 exercise of professional judgment will provide a
17 satisfactory level of protection to the environment
18 given the present understanding of the environment, and
19 that measures are being taken to increase knowledge and
20 understanding of the timber management effects on the
21 environment in order to improve decision-making in the
22 future.

23 I submit those are the tests to be met,
24 and the Board need not answer the questions or assess
25 the guidelines against the tests or benchmarks

1 identified by Mr. Hanna.

2 Having said that, I still believe that I
3 should address the Coalition's submissions in their own
4 terms, and I intend to do that.

5 And I believe that it's appropriate to
6 try to meet them on their own playing field because of
7 the possibility that the Board may accept the tests set
8 out by Mr. Hanna as being the correct ones, and I
9 wouldn't want to leave the record without any response
10 to that.

11 So I want you to be aware that as I go
12 through this and deal with their position I'm not
13 accepting the basis upon which it was put forward to
14 you, but I am doing so firstly out of an abundance of
15 caution for my client's perspective and, also, should
16 you embrace some of those approaches by Mr. Hanna,
17 hopefully the submissions I make will be of some
18 assistance to you in assessing the merits of these
19 submissions.

20 Now, the Coalition submits that the moose
21 habitat guidelines and tourism guidelines are, in
22 effect, the impact prediction methodology proposed by
23 the Proponent to deal with the wildlife and tourism
24 impacts. You will find that at Volume 405 page 69305,
25 and that if a Proponent can obtain approval from the

1 Board that that is an appropriate basis to predict the
2 impacts that the Proponent can simply say that the
3 Board has concluded that it is an appropriate way to
4 predict the impacts, that it doesn't decide what the
5 appropriate impacts are, but it certainly sets aside
6 the question of: How are you going to predict them.

7 I want to deal first with the
8 propositions put forward that the underlying impact
9 prediction methodology developed is unreliable, that is
10 the guidelines are unreliable, and that they are
11 technically unsound. I want to begin by referring to
12 the OFAH argument on Volume 405, page 69332. At that
13 page Mr. Hanna states as follows:

14 "The Coalition submits that the ESSA
15 exercise, which was explained to you in
16 Exhibit 381, was an attempt to develop
17 an explicit underlying impact prediction
18 methodology for the guidelines."

19 This was discussed extensively in the
20 Coalition's cross-examination of the Ministry's Panel
21 No. 8 and I'll be spending some time on what that panel
22 said.

23 Mr. Hanna continued:

24 "The Proponent and ESSA were
25 unequivocal...", Mr. Hanna says:

1 "...in stating that the underlying impact
2 prediction methodology developed is
3 unreliable and is not technically sound."

4 So he's saying that there was an attempt
5 or he suggests there was an attempt to develop an
6 explicit impact prediction methodology and that the
7 Proponent and ESSA were unequivocal in stating that the
8 underlying impact prediction methodology developed was
9 unreliable and is not technically sound. And we will
10 say right now, we don't agree with that submission. I
11 will be speaking to that further.

12 Mr. Hanna continues and says:

13 "On the basis of the Proponent's own
14 evidence, the Coalition submits that the
15 guidelines must be rejected as being
16 technically unsound and not satisfying
17 the fundamental data and analysis
18 principles common in environmental
19 assessment."

20 It is apparent when one reads that
21 passage that the Coalition's view as to the
22 acceptability of the guidelines that were examined at
23 that workshop - and I think I'm just going to refer to
24 it using the moose guidelines throughout just so that
25 it's easier to follow the submissions - they're saying

1 that something had occurred at that workshop was an
2 indication that the guidelines were unreliable and were
3 not technically sound, that that was somehow the
4 conclusion one should come to because, as Mr. Hanna
5 indicates, what happened there was a failure to develop
6 an explicit impact prediction methodology approach.

7 It's my submission that the argument put
8 forward by the Coalition, the foundation of their
9 argument that somehow there was a flaw in those
10 guidelines fails at its most fundamental level because
11 the ESSA workshop was not conducted or intended to
12 produce the type of model that Mr. Hanna was talking
13 about; that is, that workshop was not intended to
14 produce a quantitative predictive tool to be used at
15 the operational level.

16 To make that quite clear, I refer you to
17 Volume 69 page 11760 to 11762, starting at line 21 -
18 and I'm going to read portions of the transcript on
19 those pages - Mr. Armstrong, who was at that time
20 acting for the Coalition, says to Dr. McNamee, who you
21 recall was with ESSA and was involved in these
22 workshops:

23 "Now, I may be splitting hairs here, I
24 don't know, but the information I have
25 that the purpose of this assignment...",

1 the workshop:

2 "...was as follows: 'The purpose of the
3 assignment for which proposals are
4 requested...', and under Phase 1 it says:
5 'To develop quantitative or conceptual
6 models that link the most important
7 timber management activities to these
8 other resource values'."

9 Dr. McNamee says:

10 "I will admit that a model was built.
11 It was not a goal of the whole effort to
12 produce a working model which we would
13 then hand over to MNR."

14 And he continues later on page 11761:

15 "The model was used as a means to get
16 a group of diverse technical experts to
17 explicitly define what their hypotheses
18 of effect were in terms of what effects
19 timber management actions may be, to get
20 the technical experts to clearly define
21 or to understand what the key unknowns
22 were, and it would be a mistake to use
23 the model that we had built in any other
24 way."

25 I suggest he's saying it would be

1 inappropriate to use it, therefore, as an operational
2 model used in the field.

3 If you read Mr. Armstrong's
4 cross-examination of Dr. McNamee in Panel No. 8, I
5 submit that you will see that the Coalition's
6 expectation of what the workshop would produce by way
7 of a quantitative prediction tool was incorrect.

8 Again, I go back. It was the failure to
9 provide such a tool which caused the conclusion to be
10 reached by the Coalition that somehow the guidelines
11 themselves were ineffective or unsound. And to
12 establish that very clearly, what the Coalition's
13 expectation was I would refer you to Volume 69 at pages
14 11772 to 73. Still looking at line 19, Mr. Armstrong:

15 "Now, I can tell you that in agreeing
16 to participate...", in the ESSA workshop,
17 "...my client was expecting a positive
18 study in the sense of developing
19 a comprehensive set of tools to predict
20 and evaluate the effects of timber
21 management. And that is a fair
22 expectation, given the terms of
23 reference?"

24 He asked.

25 Answer:

1 "The objective was to build or to
2 design and effects monitoring program.
3 One of the toolds that we agreed to use
4 in the design of that, of a program of
5 that sort was a quantitative model. The
6 model was not the end, the model was a
7 means to the end."

8 Mr. Armstrong:

9 "The expectation that I suggested my
10 client had, was that a reasonable or an
11 unreasonable expectation?"

12 Answer:

13 "I have no idea, I'm not sure."

14 Then Dr. McNamee says:

15 "It is unreasonable in a general sense
16 to expect that a quantitative model of
17 that sort which is built in such a short
18 period of time could be used as a tool to
19 quantitatively assess impacts."

20 So OFAH believed that the exercise was
21 intended to develop an explicit impact prediction
22 methodology for the guidelines. That was incorrect, as
23 explained by Dr. McNamee.

24 MNR are not aware of any evidence which
25 supports the written OFAH argument which states, and I

1 repeat again from page 69332 that:

2 "The Proponent and ESSA were
3 unequivocal in stating that the
4 underlying impact prediction methodology
5 developed (i.e. the moose habitat
6 guidelines) is unrealistic and is not
7 technically sound."

8 If that statement in the OFAH argument
9 that I have just referred to refers to the fact that
10 the quantitative model which was produced during the
11 ESSA workshop was not operational at the end of the
12 ESSA exercise - and we assume that that's what they
13 mean, we can't figure out what else they could possibly
14 mean - we submit that that is not a reasonable basis to
15 conclude that the moose habitat guidelines are
16 unreliable and technically unsound.

17 I would like to refer you to Volume 69
18 page 11768. Dr. McNamee in the passage that I will
19 refer to describes the difference between the kind of
20 information that they had put together for the purposes
21 of dealing with these hypotheses of effect and the
22 information which actually got put into the
23 quantitative model that they were using in order to
24 assist them in that exercise. Dr. McNamee says:

25 "I believe that this report...",

1 referring to the ESSA report,

2 "...contains the best understanding that
3 existed at the time this report was
4 written about the timber management
5 effects that are in here", in the report.

6 "I am not...", he says,

7 "I am not convinced that the working
8 model that we built and that exists on
9 the main frame has all of that
10 understanding."

11 They didn't put it into it. Those are my
12 words, they didn't put it into it. Dr. McNamee says:

13 "You must realize that it was built in
14 a very short space of time."

15 In my submission, Dr. McNamee was saying
16 that all the knowledge in the ESSA report regarding
17 hypotheses of effect regarding timber management
18 activities on moose were not incorporated into the
19 quantitative model because that wasn't just a simple
20 task.

21 At page 11770 Dr. McNamee explains why it
22 isn't an easy task and he states:

23 "I believe that as the model stands
24 right now as a tool to quantitatively
25 predict the effects of various timber

1 management actions the model requires a
2 great deal of extra work.

3 And I'm advised that nobody thinks
4 that that job, that if one wanted to take
5 that model and make that a quantitative
6 tool that did contain the best current
7 understanding and could be used by those
8 who do resource management of various
9 forms, that they would feel that it was a
10 tool that they could actually use. That
11 process takes an extremely long period of
12 time."

13 So I submit, Madam Chair, Mr. Martel,
14 that the fact that all the information from the ESSA
15 workshop regarding hypotheses of effect have not been
16 incorporated into a quantitative model does not mean
17 that it could not be done.

18 In fact, you have heard from Dr. Abraham,
19 and I made reference to this in my argument-in-chief,
20 but that model is part of what is going on in the moose
21 monitoring study.

22 You will find discussion of that in MNR's
23 Chapter 3.2 and I made reference to to these specific
24 passages earlier.

25 Therefore, the fact that all the work had

1 not been done to finalize the quantitative model at
2 those workshops does not mean that the moose habitat
3 guidelines or the underlying or implicit impact
4 prediction methodology in those guidelines was
5 unreliable or not technically sound.

6 In connection to this, my submission that
7 the monitoring program will develop an explicit
8 predictive methodology and verify it, that it will
9 continue the work started at that ESSA workshop in
10 relation to a quantitative model and complete it, I
11 would like to refer you to MNR's written argument at
12 page 710. So that will be Volume 2, page 710.

13 And you'll see that the issue which is
14 posed is: Are the moose guidelines testable. If you
15 recall that the evidence of the Coalition was that they
16 were not, and that relates to this very subject matter
17 that we're talking about. So it says:

18 "The Coalition have contended that the
19 guidelines are not testable because they
20 do not contain explicit quantitative
21 predictions of cause/effect
22 relationships."

23 In his response to the questioning of
24 OFAH counsel during MNR Panel 8 Dr. Peter McNamee
25 addressed the nature of the results that were expected

1 to flow from the effects/effectiveness monitoring
2 program. Dr. McNamee:

3 "If the effects monitoring program is
4 put in place to the extent which is
5 described in our March, 1988 report, it
6 will I believe improve both the
7 understanding of how adequate the timber
8 management guidelines are.

9 But I also believe that it will
10 provide a lot of understanding to improve
11 what Dr. Baskerville states is the
12 quantitative cause and effect
13 relationships between timber management
14 actions and the resources of tourism,
15 fish and moose.

16 So I believe it would do more than
17 just, as you said, preserve the status
18 quo. I think it would do much more than
19 that."

20 And then there's just references to Dr.
21 Euler and Dr. Abraham who in fact indicate that it is
22 expected that one of the outputs of that program, the
23 monitoring program in relation to the moose habitat
24 guidelines, will be the development of this
25 quantitative model.

1 Again, a model which was not the
2 intention of the ESSA workshop to design, but one which
3 Dr. McNamee indicated was designed to assist them in
4 dealing and identifying their hypotheses of effect.

5 Now, during his submissions Mr. Hanna
6 sort of posed a question: Well, will the implicit
7 relationships in the moose habitat guidelines be made
8 explicit?

9 The study or the quantitative model which
10 is being developed is going to in fact do that in a
11 certain way. It's going to do it, I would submit, in
12 the very way that Mr. Hanna suggests it should be.

13 But I would submit that that does not
14 mean that the implicit relationships in the moose
15 habitat guidelines have not been explained or made
16 explicit at all to this point in time.

17 I would submit to you that they have been
18 explained and made explicit in this hearing to the
19 extent possible at this point in time, and I'm
20 referring to the evidence of Dr. Euler who explained
21 the development of the moose habitat guidelines and who
22 reviewed the reports which are attached as appendices
23 to the moose habitat guidelines where it states that:

24 "The guidelines are based upon a body
25 of scientific literature."

1 And the papers that are referred to are
2 those authored by Thompson and Euler and one by McNicol
3 and Timmerman. You'll find those references at page 10
4 of Exhibit 310, 310 being the moose habitat guidelines.

5 Dr. Euler and Mr. McNicol in direct
6 evidence spoke at length about their knowledge of moose
7 habitat requirements, the current featured species
8 approach, how management for moose or deer was thought
9 to have an impact on other species, et cetera.

10 I mean, I know that the Coalition will be
11 critical and say: Well, that isn't a very good attempt
12 at being explicit about the relationships, you should
13 do that a different way. But I submit to you that
14 given the state-of-the-art at the moment that was an
15 explanation of the relationships behind the moose
16 habitat guidelines.

17 There was reference to how many moose it
18 was believed could in fact be carried on a certain area
19 of the landscape, that got translated into guidelines
20 which came up with the 80 to 130 hectares as being
21 ideal, and that has been in fact enhanced through the
22 moose carrying capability of the land base as described
23 by Mr. McNicol to make the application of those
24 guidelines a more refined one.

25 OFAH say that the moose habitat

1 guidelines do not consider site variability, and they
2 make that submission at page 69319 of the argument of
3 the transcript.

4 I again refer back to the evidence of Mr.
5 McNicol explaining how the moose habitat guidelines, in
6 particular, their application do take site variability
7 into account. I'm referring again to his explanation
8 of differentiating between high, medium and low moose
9 capability areas.

10 You'll recall yesterday I explained the
11 relationship between the moose habitat guidelines and
12 their application and the 70 per cent of the species
13 who in fact rely on habitat similar to that provided by
14 the moose habitat guidelines.

15 The OFAH suggest that the moose habitat
16 guidelines focus only on site-specific values, and I
17 would remind the Board that the moose habitat
18 guidelines do more than talk about how to protect
19 site-specific values such as moose aquatic feeding
20 areas and the like, that they also address the issue of
21 range management.

22 And it is the guidelines in relation to
23 clearcut size, moose corridors, leave patches and the
24 like which indicated that the guidelines do indeed
25 address something much more than just site-specific

1 values.

2 If I can just have a moment, Madam Chair.

3 ---Discussion off the record

4 MR. FREIDIN: The next proposition I
5 would like to address is the suggestion from the
6 Coalition that the moose habitat guidelines are the
7 only mechanism for addressing wildlife concerns.

8 I would submit that in the process of
9 timber management planning development all sorts of
10 values and concerns are identified and taken into
11 consideration. You've heard evidence about MNR's
12 inventory efforts, how information is collected about
13 values of interest and formal concerns.

14 In considering those concerns, the moose
15 guidelines may be of assistance, they may be applied,
16 and in some cases they may not be applied over a large
17 area, such as the situation if there's a concern about
18 caribou.

19 More commonly, site-specific protection
20 measures are implemented not just for moose but for
21 other wildlife species, bald eagles, red-shouldered
22 hawks and other wildlife species being some examples.
23 Simply put, all of these modifications or adjustments
24 to timber management plans can and do occur during
25 timber management planning and they are developed to

1 take care of wildlife concerns.

2 In terms of the moose habitat guidelines
3 you may ask yourself again the question that's came up
4 here in the hearing: What about the other 30 per cent?
5 Are measures being taken to address those?

6 I will remind you, and I will deal with
7 this later when I deal with the issue of featured
8 species, but the evidence of Dr. Euler was that there
9 is no evidence that those 30 per cent are being
10 threatened as a result of timber management planning,
11 that there is no evidence that their viability is being
12 threatened, that that doesn't mean that the Ministry of
13 Natural Resources is ignoring those 30 per cent, that
14 they will in fact be considered during the provincial
15 population monitoring program which is described in MNR
16 term and condition No. 67.

17 And, in my submission, the evidence
18 indicates that there is no evidence which indicates
19 that something need to be done in an explicit way by
20 way of specific management program to address those 30
21 per cent at the present time, and by specific program,
22 I mean some sort of program to do something on the
23 ground as a general matter to address those 30 per
24 cent.

25 The message which I'm trying to get

1 across, and I hope we've had some success, that the
2 Ministry of Natural Resources relies on much more than
3 just the moose habitat guidelines to address wildlife
4 concerns.

5 You've heard how the Ministry is using a
6 guideline approach at the present time, you've heard
7 how the Ministry is developing these quantitative
8 predictive methodology tools that Mr. Hanna speaks
9 about. By that I'm referring to the evidence you've
10 heard about the work ongoing in the Ministry in the
11 development of HSA models.

12 I want to just make some general
13 observations regarding the guideline approach
14 generally, and I think the best way to do that is to
15 refer you to the Ministry's argument in Chapter 3.1 at
16 page 651.

17 And what I want to do is deal with the
18 some of the passages which are contained under the
19 issue identified in the middle of page 651 and, that
20 is: Is the use of implementation manuals an
21 appropriate management approach to the protection of
22 non-timber values during timber management planning.

23 And not because he is the only person
24 whose opinion you should have some regard to in this
25 matter, but because he is so heavily relied upon by the

1 Coalition who attacked the use of guidelines, the
2 passages that I'm going to refer to are primarily those
3 which identify comments by Dr. Baskerville.

4 If you turn to page 652 in the last full
5 paragraph you recognize Dr. Baskerville's concern about
6 constraints but you'll note in the third line of the
7 paragraph it says:

8 "Dr. Baskerville stated...", and I
9 would take you to the second part of the quote:

10 "...we will never get away from
11 constraints completely, but I would like
12 to see us move more towards active
13 control of the intervention rather than
14 trying to constrain only.

15 "What is being done by MNR would
16 pass for integration in most provinces.
17 and the approach that is currently used
18 I think in most jurisdictions in this
19 country, if not all, is one of
20 constraint."

21 And he's equating constraints and
22 guidelines.

23 There's reference to Dr. Thomas on the
24 next page, to Mr. patch on the next page. If you go
25 over to page 654 in the third full paragraph he

1 continues:

2 "During his oral evidence before the
3 Board Dr. Baskerville agreed that there
4 are advantages to the use of guidelines.
5 For example, to aid the learning process
6 and to prevent major errors while a
7 person learns."

8 Although he stressed that:

9 "...experienced professionals would be
10 in a position to go beyond the guidelines
11 in terms of implementing management."

12 He agreed that:

13 "If the guidelines are prepared in
14 accordance with the best science
15 available, the use of guidelines is a
16 good place to start in terms of
17 management, and their use is reasonable
18 while MNR moves in the direction of
19 researching and developing more
20 sophisticated tools and analytical
21 approaches to management."

22 So he makes that comment in relation to
23 MNR specifically.

24 Dr. Baskerville commented further:

25 "The issue is not whether or not the

1 guidelines are useful, they are as a
2 place start, the issue really in my mind
3 is how quickly we improve them to provide
4 an understanding of system dynamics."

5 And I referred you in my
6 argument-in-chief to the comments by Dr. Baskerville
7 about the rate at which we moved in that regard and I
8 don't intend to repeat them here.

9 If we go to page 655 in the third full
10 paragraph it states:

11 "Certainly Dr. Baskerville indicated
12 that he did not recommend wholesale
13 changes in MNR's current management
14 approach."

15 After describing his preference for a
16 management process which utilizes quantitative
17 predictive models, more frequently than is is presently
18 the case, Dr. Baskerville stated, and I quote:

19 "I believe the essential thing is to
20 start moving towards such a system, to
21 start in a way that minimizes the risk
22 of option foreclosure and to start in a
23 way that makes the best use of available
24 knowledge and to start in a way that
25 causes the manager (decision-maker) to

1 learn in a most effective way.

2 "Now, if it isn't clear what I would
3 argue is that I would, no matter how
4 elegant a management scheme I had to
5 initiate, I would begin by using
6 guidelines."

7 You'll note that in that quote there is
8 the reference to a risk of option foreclosure. That
9 was a phrase that Mr. Hanna used in his submissions to
10 you. If you go to footnote 55 at the bottom of the
11 page you will see that it states, option foreclosure,
12 it indicates:

13 "Option foreclosure refers to the
14 situation created when the result of
15 management action forecloses one's
16 options to change or remedy adverse
17 consequences which are created."

18 It is my submission to you that the
19 evidence does not support a finding that the course
20 being followed by MNR, which is using guidelines while
21 moving towards the use or the development and use of
22 quantitative predictive models, will result in option
23 foreclosure, or that the risk of option foreclosure is
24 such that new approaches must be adopted and
25 implemented with the haste advocated by the Coalition

1 and some other parties.

2 In terms of the development of these
3 predictive tools and the extent to which they are used,
4 I would refer you to Volume 354, page 61815, which is
5 part of the cross-examination of Dr. Page in OFAH Panel
6 No. 7. The pages that I'm going to be referring to or
7 quoting from are pages 61815 to 61817.

8 And you will recall that Dr. Page gave
9 some evidence about the development and use of HSA
10 models in British Columbia and he talked about the use
11 of workshops to develop them, and I'm going to refer
12 you to these because I want you to assess whether what
13 was done in British Columbia or is being done in
14 British Columbia is really different than the approach
15 being taken by the Ministry of Natural Resources in
16 Ontario in the way it approaches the development and
17 the operational use of the kind of tools the Coalition
18 are advocating.

19 I'm going to submit to you that there
20 isn't much difference at all.

21 Starting at the top of 61815:

22 "Q. Did you start using the model
23 operationally after the three-day
24 workshop?

25 "A. No.

1 "Q. Well then when?

2 "A. There were requests, as I
3 mentioned, from Industry foresters almost
4 immediately to use the model. First of
5 all, we were concerned that being crude
6 it may not have been appropriate to incur
7 cost on Industry if we didn't have any
8 justification for the benefits.

9 "Q. I understood you said in your
10 evidence that before you give it to the
11 companies you wanted to validate the
12 model."

13 And you've heard a lot of discussion
14 about validating models in the hearing.

15 "A. I am a scientist and I have to
16 have some faith in everything I do.

17 "Q. That's why before you give it to
18 the companies it has to be validated?

19 "A. We chose that. It doesn't have
20 to be, yes."

21 So here you've got Dr. Page who's
22 involved in developing these models who indicates that
23 before it's given to the companies they're saying they
24 want to validate the model.

25 The particular model he was talking about

1 was one which had been under development for many
2 years, where 10 years of study had gone into collecting
3 the data, and in 1985 he said that there had been five
4 years of study included in relation to it.

5 At 61817 I asked Dr. Page:

6 "But there was some validation, some
7 level of validation that you felt was
8 necessary before you would give it to the
9 companies to use; is that not correct?

10 "A. That's a personal judgment as a
11 scientist.

12 "Q. But that's in fact what happened;
13 is it not, that it was not given to the
14 companies until there was some level of
15 validation?

16 "A. The companies haven't received it
17 yet."

18 In terms of the status of that program
19 and the importance of validation, and you recall that
20 this issue of validation is something which I addressed
21 in argument-in-chief and which is dealt with in some
22 detail in our argument in Chapter 3.2A.

23 You'll recall that this issue about a
24 validation is what Dr. Abraham says that you have to do
25 the necessary research, be comfortable with your

1 prediction of the cause/effect relationship which are
2 in the model before you give it to the field. And the
3 exercise that they go through when they're developing
4 these models, which gives them enough confidence about
5 the reliability of the cause/effect relationships that
6 they're predicting, is called validating the model.

7 So Dr. Page recognizes the importance of
8 validating models before you give it to the field. In
9 British Columbia it was too crude, they were concerned
10 about it, they had to be validated before there was
11 some comfort in giving it to the field for use as an
12 operational tool.

13 And that is the evidence of the Ministry
14 of Natural Resources and the position that I in fact
15 explained in my argument-in-chief.

16 In OFAH Panel No. 7 witness statement
17 Exhibit 2097, Question 42 which was posed in the
18 witness statement was:

19 "What is the current status of this
20 program?"

21 They were talking about the HSA,
22 development, the HAP model. Dr. Page:

23 "The model works and is operational.
24 We are currently doing further testing
25 with radiotelemetered deer in three

1 study areas. To date this modeling
2 initiative has been applied in two forest
3 management lands in British Columbia."

4 He goes on, he says:

5 "Results have been good to date and
6 methodology is being more widely
7 applied."

8 There is no evidence that it was being
9 used in an operational way in more than the two forest
10 management plans that he referred to, to just indicate
11 that they're off to a start in British Columbia in
12 relation to implementing that program in an operational
13 way.

14 Again at page 40 in the same document in
15 paragraph 46, when he was asked about the current
16 status of their program - and this again is the HAP
17 program - habitat analysis procedure, I believe, he was
18 asked what the current status of the program is and he
19 said, the program has been very successful, and he
20 says:

21 "Although it is already established as
22 a successful management tool in British
23 Columbia...", and he's just made the
24 submission that it's being used operationally on two
25 management units, he says:

1 "Although it is already established as
2 a successful management tool in British
3 Columbia, we are currently doing more
4 testing of the model to more firmly
5 establish its credentials from a
6 scientific validity perspective. This
7 will put us in a better position to
8 convince other jurisdictions of the value
9 of this model."

10 I will just remind you, but not repeat,
11 the submissions that I made in argument-in-chief where
12 I outlined the evidence of Mr. Watt who has wide
13 experience in the development of these tools, who in
14 fact compared from his perspective where MNR was in
15 relation to the development of these tools in
16 comparison to other jurisdictions across Canada and
17 you'll find that matter addressed on pages 819 to 822
18 of MNR's argument.

19 I now want to refer, Madam Chair, Mr.
20 Martel, to some portions of Mr. Hanna's
21 cross-examination of Dr. Baskerville for some of the
22 issues raised in their argument.

23 Again I'm focussing on Dr. Baskerville
24 because there's such reliance by the Coalition on what
25 Dr. Baskerville says, and the passages that I'm going

1 to refer to deal with a number of matters including the
2 development of HSA an the issues of when and how
3 quickly it can be implemented.

4 And this also goes to this issue of
5 scheduling, should the Board accept the submissions by
6 the Coalition that you should set a schedule, impose
7 specific requirements be met by specific times in
8 relation to the development of this tool.

9 In relation to HSA commencing -- by the
10 way, the passages I'm going to refer to begin on page
11 29614 at Volume 167 and on that page, in relation to
12 the issue of HSA, Mr. Hanna asks:

13 "How long would it take to develop the
14 type of program that you are talking
15 about to put in effect?"

16 DR. BASKERVILLE: On one management
17 unit?"

18 Excuse me, this was your question, Mr.
19 Martel, and you said:

20 "Yes, on one management unit.

21 "A. With people who had an interest
22 and willingness to do that, I would
23 suggest that the people who can write
24 guidelines could also draw those curves
25 and they could be up and running inside

1 five years, maybe not to the point where
2 they would have someone else like an FMA
3 holder doing it."

4 At page 29625 Mr. Hanna -- pardon me, in
5 the answer he says:

6 "I used one unit --"

7 This is Dr. Baskerville going on:

8 "I used one unit because I really
9 believe that this is going to be more
10 a people problem. The skills to do this
11 and the interest in doing this, you don't
12 have 117 people I would guess that could
13 do that starting tomorrow or could do it
14 in a way that was biologically
15 reasonable. They might be able to follow
16 a set of rules but there is much more.

17 "In this first cut you want someone
18 who's thinking hard about populations not
19 about how to build a rule book, so the
20 rate at which this could be spread across
21 all of the units would depend entirely on
22 the kind of manpower that is there."

23 At 29627 Mr. Hanna:

24 "What would you expect or what would
25 you want to see at that six years...",

1 we're talking about the end of the approval,

2 "...at that six-year point. If this
3 approach is adopted, what would you want
4 to see as a performance measure, if you
5 will, if you are moving in a direction
6 that you want to go?"

7 I think that's getting to really what Mr.
8 Hanna is proposing.

9 Dr. Baskerville:

10 "I think it would be possible to set a
11 target, I'm a little uneasy with that
12 because you were talking about a
13 philosophical change here really in
14 approach and that is a very difficult to
15 mandate."

16 He goes on:

17 "Trying to force it will get you the
18 appearance of compliance without
19 compliance on the ground and to me that
20 is worse than having made any progress at
21 all."

22 I'm sorry, let me read that again.

23 "Trying to force it will get you the
24 appearance of compliance without
25 compliance on the ground and to me that

1 is worse than not having made any
2 progress at all.

3 "The issue here to me is: How do we
4 achieve a balance between timber supply
5 and habitat supply on a management unit,
6 not how do we give the appearance of
7 that. I am uneasy about setting a
8 target, I guess is what I'm saying."

9 At page 29631 Dr. Baskerville says:

10 "The main message there is that you
11 couldn't start on the whole of the
12 province all at once, I don't believe
13 that's technically feasible."

14 And the last section that I would like to
15 quote begins at line 21 of page 29632 where Mr. Hanna
16 puts to him what sounds somewhat similar to the
17 submissions he made to you, or the suggestions he made
18 to you.

19 "MR. HANNA: Q. But if it was to
20 say...", and they're talking about your decision,

21 "...we must establish measurable
22 quantified objectives in the timber
23 management plan for wildlife, we must use
24 a habitat supply model type of analysis
25 to cause/effect linkages and the other

1 things that you have described, the
2 process becomes enshrined but the actual
3 knowledge in the system itself can be
4 refined over time. Do you follow what I
5 mean?

6 "A. Yes. If you think of what we
7 just spoke of, Mr. Chairman, such a
8 requirement would inevitably lead to a
9 trivial forecast of habitat supply on a
10 majority of management units. Such a
11 requirement would inevitably lead to
12 a trivial forecast of habitat supply on a
13 majority of management units.

14 "If you require such a process...",
15 he's referring to a non-trivial one,

16 "...on everyone, there clearly is not the
17 capability to do that suddenly on all of
18 them. I mention that because I think
19 that in natural resource management we
20 frequently make that mistake, that we
21 will make a requirement that covers
22 everything as if we could do it all
23 suddenly now."

24 And he states:

25 "I'm really uneasy about trying to

1 make any of these things happen suddenly
2 on large areas in complex systems."

3 And I would submit to you that that is
4 exactly what the Coalition are asking you to do.

5 In relation to this matter of HSA Mr.
6 Hanna got up and said: Well, we just want you to adopt
7 the concept, and I would submit to you that adopting
8 the concept is one thing, implementing it in a credible
9 way, in a non-trivial way is not easy or as simple as
10 Mr. Hanna suggested to you during his submissions.

11 During the cross-examination of Panel No.
12 8, and you remember it's Panel No. 8 where all this
13 cross-examination took place by Mr. Armstrong about
14 quantitative models and them not having been properly
15 developed during the ESSA workshop that indicates that
16 the moose habitat guidelines were not technically
17 sound.

18 In the cross-examination of Panel No. 8 I
19 submit to you that it is apparent that there seems to
20 be a focus by the Coalition on the concept and a
21 request that you somehow implement the concept without
22 considering the practical reality of trying to make
23 something work in a credible way.

24 In that regard I would just refer you to
25 Volume 70, page 11887 to 11888 where there was a

1 discussion between Mr. Armstrong and Dr. McNamee about
2 moving towards a more quantitative predictive kind of
3 approach, and Dr. McNamee says:

4 "I agree that it is an end to which
5 resource management we should aim but in
6 the real world it is easier said than
7 done."

8 Mr. Armstrong continues, he says:

9 "Well most things are. The basic
10 approach that Dr. Baskerville is
11 advocating is what is technically
12 referred to as multi-objective
13 optimization function that has both
14 timber and non-timber objectives included
15 in quantitative terms.

16 "This is substantially different than
17 the guideline approach by MNR; wouldn't
18 you agree?

19 Dr. McNamee says lots of responses.

20 "The idea that one needs to optimize
21 for resource values is one element of the
22 adaptive management approach. I don't
23 myself believe completely that if one
24 does adaptive management that that is a
25 step that needs to be done or that you

1 can ever get a group of stakeholders to
2 agree on what the objective function is."

3 And the passage which I think is somewhat
4 telling is Mr. Armstrong's next question, and he says:

5 "Well, okay. Now, you have indicated
6 that you agree with, at least to some
7 extent, Dr. Baskerville's concept of
8 adaptive management as an effective
9 goal."

10 Mr. Armstrong continues and he says:

11 "Your bone to pick is the real world,
12 but let's just deal with the concept."

13 Well, that's what they did, they went on
14 for pages and talked about the concept.

15 Mr. Armstrong was worried and concerned
16 about talking about the concept and was somehow
17 critical or wanted to keep Dr. McNamee talking about
18 the real world, about the difficulties and realities of
19 actually trying to implement this concept in the real
20 world.

21 And I would submit to you that they have
22 taken that thinking, that approach and it has permeated
23 much of their case and it has permeated the submissions
24 that they have made to you in many respects in their
25 final argument. And that it is of course known that

1 the Board's terms and conditions have to get
2 implemented and they have to get implemented in the
3 real world.

4 Now, Mr. Hanna said: Well, we're not
5 tying down the Ministry to any particular model.
6 They're saying: Oh, we're leaving that discretion to
7 the Ministry, the reasonable range of alternatives or
8 how they actually - sticking with the HSA - how they
9 actually go about doing that is up to them, we're not
10 specifying anything specific.

11 And in that regard I would refer to their
12 argument starting at 69342, Volume 405. This is their
13 argument and I want to just put this on the record
14 because I want to refer to the transcripts and I want
15 to make sure that I accurately reflect what Mr. Hanna
16 was saying, what his author was, if I can put it that
17 way.

18 Commencing on line 23 at 69342, Mr. Hanna
19 says:

20 "There is nothing in the evidence that
21 the Coalition has brought forward that is
22 saying to you we want you to adopt this
23 HSA model this tool. What the Coalition
24 is saying to you is we want you to adopt
25 the concept, MNR, we want you to change

1 the way you do business, change the way
2 you look at the world, change the way you
3 deal with the public."

4 And he goes on and he says:

5 "I submit to you that they... ",
6 referring to MNR,

7 "...are just trying to dodge the bullet.
8 The bullet is a very, very simple one, it
9 is a concept, it is a way of doing
10 business, it is a mindset."

11 And he goes on, starting at the bottom of
12 69347 and says:

13 "The Coalition is not requesting that
14 the Board specify minimum data
15 requirements, the specific components or
16 a specific habitat supply analysis
17 model be used by the Proponent, that's
18 being left to the Proponent, as the
19 Proponent can decide which model it
20 decides is best."

21 Madam Chair, if there is a requirement to
22 use HSA, a specific requirement to do that, I submit to
23 you that the debate about whether MNR is using it
24 appropriately and whether they've actually decided the
25 right one is not going to go away. You will just be

1 putting in place the situation where the battle will be
2 moved from this forum to every management unit.

3 And I make that submission because of the
4 sort of submissions Mr. Hanna made about what happens,
5 for instance, in relation to the featured species
6 approach where he also advises that there will be
7 discretion given to the Proponent.

8 On 69299 it states, starting on line 17:

9 "The Coalition also notes that its
10 terms and conditions do not specify the
11 level of analysis and sophistication
12 necessary to deal with these two
13 additional featured species, that is left
14 up to the Proponent. The forest
15 industry, local citizens committees and
16 the general public can decide on the
17 appropriate level of analysis to use
18 those criteria that are yet to come in
19 terms of how to decide on what's a
20 reasonable level of analysis.

21 "It's still open...", Mr. Hanna says,
22 "...that decision is still open and I
23 submit to you the fact that it's open, by
24 definition, makes it affordable."

25 He continues.

1 "The Coalition submits that those
2 decisions will be testable potentially
3 under the Environmental Assessment Act,
4 that if the Proponent does not
5 appropriately exercise its judgment and
6 discretion that that would be grounds for
7 a bump-up."

8 What Mr. Hanna is saying is: Okay, we
9 won't tie your hands, you do whatever you want, we will
10 give you the discretion. But then he says: If the
11 Proponent does not appropriately exercise its judgment
12 in terms of doing HSA that that would be grounds for
13 bump-up.

14 And I submit to you that what that means
15 in the real world is that if there is a legal
16 requirement to do HSA in timber management planning
17 that Mr. Hanna and other individuals who want to move
18 the yardsticks towards this more quantitative
19 predictive analysis are going to appear and they are
20 going to say that the exercise of that discretion has
21 not been very well done, that what you have done really
22 is trivial, this doesn't meet the intent of the term
23 and condition, this is unacceptable.

24 We can't live with this, we're going to
25 have that matter reviewed, we're going to ask the

1 Ministry of the Environment to have an individual
2 environmental assessment that is going to deal with
3 that particular issue.

4 That, in my respectful submission, is
5 what will happen. And the way to deal with that, to
6 avoid having to start from scratch on that issue as
7 well, is for the Board to recognize the state of
8 development of HSA in this province, to recognize that
9 the Ministry of Natural Resources has made a commitment
10 in its terms and conditions to continue its efforts in
11 relation to HSA development, and to say that it is
12 reasonable to approve the undertaking on the condition
13 that MNR continue to apply the guidelines which have
14 been developed based on the best scientific information
15 available.

16 I think, Madam Chair, that might be an
17 appropriate time for a break.

18 MADAM CHAIR: All right, Mr. Freidin.
19 We'll be back in 20 minutes.

20 ---Recess at 10:25 a.m.

21 ---On resuming at 10:50 a.m.

22 MADAM CHAIR: Please continue, Mr.
23 Freidin.

24 MR. FREIDIN: Madam Chair, I want to move
25 on to the topic of featured species. The OFAH proposal

1 regarding featured species is part of an overall
2 approach that they are making in relation to
3 biodiversity. They are proposing two additional
4 provincial species, marten in the boreal forest and
5 pileated woodpecker in the Great Lakes/St. Lawrence
6 Forest.

7 And I think I accurately describe their
8 approach as one where they are proposing that there be
9 a minimum supply of 10 per cent of the oldest age-class
10 of each forest ecosystem type within a forest
11 management unit be maintained in perpetuity to provide
12 what Mr. Hanna referred to as the cogs and wheels, and
13 that through the management of the four featured
14 species, the two present ones and the two that they are
15 suggesting be added, that that will ensure
16 consideration of the spacial habitat needs of animal
17 and plant species dependent on not only -- pardon me,
18 on mature and old age stands in addition to those
19 associated with early middle successional stages.

20 Dealing with their proposal in relation
21 to the featured species aspect of their overall
22 approach, OFAH, as I understand their submissions, have
23 said that it is imperative to put something new in
24 place now to address biodiversity because there is an
25 urgent need to do something now.

1 I would submit that if the Board finds
2 that immediate and new management action to address
3 biodiversity is not required, then the addition of two
4 featured species is unnecessary if you're looking at
5 OFAH'S practice.

6 Mr. Hanna and OFAH has to get by the
7 initial hurdle of convincing you that there is an
8 urgent need to do something now to address biodiversity
9 before you would add two featured species because his
10 proposal, the Coalition proposal in relation to those
11 featured species is bound together with and is part of
12 an overall approach to maintaining biodiversity.

13 I would submit that the evidence does not
14 support the proposition, as I've said before, that
15 viable populations of wildlife species are being
16 threatened by timber management or that other aspects
17 of the environment, to use Mr. Hanna's words, the cogs
18 and wheels are being threatened by timber management.

19 I would submit that in light of this
20 evidence that it is reasonable to conclude that given a
21 choice between accepting the OFAH proposal,
22 implementing it now and yet allowing the work directed
23 to biodiversity to proceed in the way MNR has described
24 it, and I went through that in my argument-in-chief,
25 that you choose the latter, that you choose the MNR

1 approach.

2 And the reasons for that are, firstly,
3 that the requirement to add more featured species and
4 to manage for them, be it as part of a proposal
5 regarding biodiversity or whether it's just to add them
6 apart from a biodiversity approach such as that being
7 proposed by the Coalition, will require the diversion
8 of staff time and staff costs away from the direction
9 that several parties have indicated is the direction to
10 go.

11 And the direction that I am referring to
12 is the management of biodiversity, or for biodiversity
13 through managing at the landscape level.

14 You'll recall that this approach to
15 addressing biodiversity has been supported by the
16 wildlife working group that you have heard about, it
17 has been supported by the group that produced Exhibit
18 2274 which is one of the ESSA reports, that's the one
19 which is entitled Investigation into the Effects of
20 Timber Management on Wildlife.

21 There are only so many people and so many
22 dollars to go around and I submit that it is reasonable
23 to expect that diverting efforts to the management of
24 more featured species will adversely affect MNR's
25 ability to move forward on a preferred course as

1 described in MNR reply Panel 3, and the preferred
2 course that I refer to is described at page 36 of that
3 reply witness statement where it is described as
4 follows:

5 "Moving from a wildlife management
6 approach which focuses primarily on
7 individual species to one which strives
8 more explicitly to conserve
9 biodiversity."

10 Now, in the alternative, Madam Chair, if
11 the Board looks on the Coalition's proposal with some
12 favour the question then really becomes: What is the
13 evidence - and I underline the word evidence - which
14 establishes that what they have proposed will work or
15 is a reasonable approach to the biodiversity issue.

16 In effect, will their total approach work
17 where they have a requirement to maintain 10 per cent
18 of forest types remain in the oldest seral state and
19 adding featured species, provincially featured species
20 and managing for locally featured species. What is the
21 evidence which establishes that it will work or it is a
22 reasonable approach to the biodiversity issue?

23 OFAH have changed their terms and
24 conditions in relation to the package. I'm referring
25 primarily to the first part of the package, one of the

1 important components of the broad approach and, that
2 is, the section dealing with maintaining 10 per cent in
3 a certain state across the landscape.

4 You recall that OFAH originally stated in
5 their draft term and condition 160 that they required
6 that 10 per cent of the total aggregate area in each
7 FEC type - and I emphasize FEC type - on the forest
8 management unit remains in the oldest seral state in
9 perpetuity.

10 They have changed that. It now says that
11 one is required -- or it's requiring that 10 per cent
12 of each forest type, not FEC type, but forest type
13 remain in the oldest seral state. You will find that
14 change in the OFAH/NOTOA argument Volume 3, Schedule B,
15 page 106 which is where their term and condition 24 is
16 reproduced.

17 Forest type, the new word, is defined as
18 stand types, general standard site types or FEC types,
19 and I would suggest that if one reads OFAH argument
20 Volume 2, paragraph 33, there is still a preference for
21 FEC types and, in any event, the proposition is still
22 being made that doing it by FEC types is still a viable
23 approach because at paragraph 33 it states:

24 "The absence of a comprehensive system
25 for the entire area of the

1 undertaking...", and they're talking
2 about the 10 per cent rule,

3 "...the absence of a comprehensive
4 system...", they're talking of effects,
5 "...for the entire area of the
6 undertaking, is not a valid argument not
7 to proceed with the Coalition's
8 biodiversity management approach where a
9 forest ecosystem classification currently
10 exists (i.e. approximately two thirds of
11 the area of the undertaking).

12 "In these circumstances
13 timber management plans should be
14 required to meet the terms and conditions
15 specified for biodiversity management."

16 What they're saying is there's FECs in
17 two thirds of the area of the undertaking, you can use
18 the FEC to implement our 10 per cent rule; where it
19 doesn't apply, use the other forest types which are
20 stand types or general standard site types.

21 Let me deal first with the FEC type. I
22 submit it's important to deal with that because it is
23 that approach, the use of FECs, which is the approach
24 that you have in evidence, and I submit to you that on
25 a review of the evidence given in support of the 10 per

1 cent rule using FEC there is no basis, no reasonable
2 basis upon which this Board can conclude that that
3 biodiversity approach, I mean 10 per cent of each FEC
4 in the oldest seral stage will work, that there is any
5 chance that it will address the concern that it is
6 purporting to address and, that is, to address the
7 maintenance of biodiversity.

8 MNR's argument in relation to Dr.
9 Quinney's evidence, and Dr. Quinney was the only
10 witness who came forward to support this 10 per cent
11 approach. MNR's argument deals with that matter at
12 Volume 2 at page 767 to 770.

13 You will recall, Madam Chair, Mr. Martel,
14 that Dr. Quinney made it quite clear that the ability
15 to map FECs was a precondition to their approach
16 working. He acknowledged that FEC had not been mapped
17 in many areas, in very many areas of the province even
18 where FECs exist and you will recall what he said.

19 He said: Well, I have heard that
20 surrogate FEC maps are being prepared. He said: I
21 hear that that's being done in the northern region.
22 And the proper word is not surrogate derived maps, it's
23 derived FEC maps.

24 And because he felt that it was practical
25 to prepare derived FEC maps he, therefore, concluded

1 that the FECs could be mapped sufficiently to, in fact,
2 implement the proposed 10 per cent rule.

3 You recall the evidence about that, Madam
4 Chair. The FEC mapping that he was talking about is
5 not mapping which would in fact identify the FECs in
6 the way Dr. Quinney described them or described was the
7 purpose of their proposal.

8 You will recall my cross-examination
9 where he admitted that when they talked about FEC types
10 they were talking about the vegetative FEC types such
11 as the ones that you would find in the northwestern
12 FEC, and you will recall there are some 36 or more
13 vegetative FEC types described in that document.

14 You will recall that the mapping that Dr.
15 Quinney was referring to and relying upon so heavily
16 was the work which he believed was being done in
17 northern region and which had been referred to in a
18 Ministry document that he read. The Ministry document
19 that he had read was Exhibit 2091 entitled Proposal for
20 a Wildlife Habitat Inventory Program, Discussion of
21 Rationale, where there was a comment in that report,
22 and I quote that:

23 "FRI information can be used to
24 generate FEC mapping."

25 And Dr. Quinney seized upon that and

1 then suggested to the Board that: Well, there it is,
2 FRI information can be used to generate FEC mapping to
3 carry out what we're proposing and, that is, the
4 identification of each FEC type on the landscape.

5 You may also recall that the document
6 that was cited for that comment in Exhibit 2091 was a
7 document or a study that had been done in northern
8 region in relation to moose management, and you will
9 recall that in reply evidence Mr. Watt, who had been
10 involved in that project, made it quite clear that that
11 methodology that they had worked on there would not in
12 any way permit the mapping of FECs in the way that Dr.
13 Quinney had described it in his evidence.

14 You will recall that the article and the
15 evidence given by Mr. Watt, and in a very small way by
16 Dr. Osborn, referred to the mapping of operational
17 groups in the northern region. You will recall that an
18 operational group is made up of a number of FECs, they
19 are not each an individual vegetative type.

20 I would ask you to recall the evidence
21 that in that exercise they were only able to map what
22 was referred to as complexes of operational groups,
23 which meant that the resolution of the mapping was such
24 that when you identified a complex of operational
25 groups you would have many, many individual vegetative

1 types within it. That was the level of resolution that
2 had been obtained there.

3 In my submission, the evidence is that
4 the mapping which Dr. Quinney says is so essential to
5 the implementation of their proposal when you using FEC
6 types is not available. And I refer you, without
7 outlining at all, to the evidence again of Mr. Watt in
8 reply Panel No. 3 and Dr. Osborn in reply Panel No. 3
9 where he spoke about the difficulties and the work
10 ongoing in attempts to in fact repair derived FEC maps.

11 Dr. Quinney was the only witness who was
12 called in support of this matter. What expertise would
13 Dr. Quinney have to even be speaking about FECs? I
14 would submit to you that he had little, if any,
15 expertise to be speaking about that matter, and if you
16 agree that he didn't, then the proposal should be given
17 no weight by you.

18 At page 61125 Dr. Quinney testified:

19 "I do not personally have training
20 regarding the integration of FRI and
21 FEC information but I know that it is
22 being done in Ontario."

23 So I do not personally have training
24 regarding the integration of FRI and FEC information,
25 page 61125. At page 61168:

1 "A precondition to applying the 10 per
2 cent rule is the ability to prepare a FEC
3 map."

4 At page 61175 Dr. Quinney admits that he
5 doesn't know what an operational group is. Even though
6 the Racey report, which was the study that was referred
7 to in that earlier exhibit, speaks about algorithms
8 being developed based upon actual observed
9 relationships between FEC operational groups and
10 existing forest cover.

11 I mean, he in reading the article
12 couldn't even interpret because he admitted he didn't
13 know what an operational group was and he certainly
14 wouldn't be in a position then to know what a complex
15 of operational groups was then either.

16 He admitted that specifically on page
17 61177 to 78. On those pages he also admitted that he
18 did not know the relationship between operational
19 groups and vegetation types. Those pages again, 61177
20 to 78.

21 At page 61181 to 82 Dr. Quinney
22 acknowledged that when the Coalition developed their 10
23 per cent rule they did not consider that when a mature
24 stand, a particular V type, vegetative type ceases to
25 exist that it does not necessarily revert back to an

1 earlier successional stage but can become an older
2 stand and turn into a different mature vegetative type.

3 You recall that he felt that on a
4 specific piece of ground, if you had a specific mature
5 vegetative type - and that's all the FECs deal with at
6 the present time - that after it ceased from being in
7 that state it would revert back, that little piece of
8 ground would revert back to the early successional
9 stage of the same V type and it would progress through
10 succession and on that same piece of ground in the
11 future you would have the same V type.

12 And you recall I took him to a section of
13 the northwest FEC where that proposition was quite
14 clearly and unequivocally shown to be false.

15 That is a review, Madam Chair, of the
16 evidence of Dr. Quinney, the total evidence called by
17 the Coalition to support the 10 per cent FEC rule. It
18 was given by a witness who just didn't have the
19 qualifications to deal with it and was shown by other
20 witnesses who do know about derived FEC maps that the
21 proposal that has been put forward is not workable.

22 And on that basis I would ask you to
23 dismiss the suggestion, or dismiss the proposal on the
24 basis that it relies on using FECs.

25 One moment, please.

1 ---Discussion off the record

2 MR. FREIDIN: In relation to the 10
3 per cent rule, where one is talking about FECs I would
4 urge the Board to refer to Exhibit 2233 which is an
5 answer to an undertaking given by the OFIA where there
6 is attached a paper by Dr. Methven entitled Maintenance
7 of Biodiversity.

8 In the fifth summary point on the first
9 page Dr. Methven has stated -- I'm sorry, what I am
10 reading to you now is the summary response, this is the
11 answer to the undertaking and this is a summary of what
12 the paper says, in part, and it says the following:

13 "Given the negative exponential
14 distribution associated with the prior
15 cycled boreal forest older age-classes
16 occupy a smaller and smaller
17 proportion of the forest. The choice or
18 per cent of area, therefore, should be
19 based on the species involved, the
20 landscape dynamics as expressed in the
21 natural age-class distribution and
22 management objectives. A rigid and
23 arbitrary 10 per cent has no validity."

24 The next issue then becomes, if you agree
25 that the FEC won't work then what is the evidence that

1 the new proposal will; that is, do it by site type or
2 general standard site type. On that matter, Madam
3 Chair, I submit to you there is no evidence.

4 I acknowledge the Board's expertise has
5 grown over the last four and a half years on these
6 matters, but I submit to you that it is not sufficient
7 to decide without any evidence, either (1) using those
8 other descriptors for the 10 cent oldest seral stage
9 will work in terms of achieving the purpose that it's
10 intended, or (2) the practical difficulties that may be
11 associated with the new proposal.

12 There just isn't any evidence on that,
13 and I suggest it's just too late in the day to come
14 forward with a new proposal and ask the Board to accept
15 it without evidence.

16 Madam Chair, those are my submissions in
17 relation to actually topics 5 and 6 and I'd like to
18 jump, if I might, to item No. 8, sustainability of wood
19 supply.

20 Questions have been asked and submissions
21 have been made regarding the sustainability of wood
22 supply and the manner in which MNR applies the
23 principle, concept of sustained yield.

24 I make two submissions. First, the
25 yield regulation as practised in Ontario is a

1 well-recognized approach to regulating the amount of
2 harvest, that is, a way to ensure that the amount of
3 harvest that can occur is restricted or limited by the
4 success that is achieved in regenerating a new forest
5 after ours.

6 Second, you have heard how yield
7 regulation as practised in Ontario is also designed in
8 such a way that it assists in the attempt -- assists in
9 the attempt to create a more even-age class
10 distribution which in turn can result in a more even
11 flow of timber availability over time.

12 In relation to the first submission about
13 controlling the amount of harvest, you heard how the
14 area that is available for harvest, the land base upon
15 which the MAD calculation is made is only that area
16 which has reached free to grow. Maximum allowable
17 depletion was explained by Dr. Osborn in MNR Panel No.
18 3. This application was explained by a number of
19 witnesses including MNR Panel No. 15.

20 You'll find MNR's argument regarding
21 maximum allowable depletion found in MNR argument in
22 Chapter 1.2, page 24 to 28 and Chapter 2.2, at pages
23 515 to 522. May I have just one moment, please.

24 ---Discussion off the record

25 MR. FREIDIN: I'd like to refer you to

Farr & Associates Reporting, Inc.

1 what Dean Baskerville said about the MAD calculation
2 and about the built-in protection to ensure that one
3 does not overharvest. In Volume 164, commencing at
4 page 29121, there's a discussion about the question of
5 area regulation and MAD calculations.

6 MADAM CHAIR: Could you just give me that
7 document again?

8 MR. FREIDIN: Well, commencing at 29121.
9 I'm not sure if that is the exact place, you should go
10 back, there's quite a long detailed discussion about
11 it. I think the important portion though really is on
12 pages 29123 to 24.

13 And there was a discussion going on about
14 MAD calculations and in response to a question from Mr.
15 Turkstra, this statement was made by Dr. Baskerville,
16 it goes to what I was telling you about just a minute
17 ago, and he said:

18 "So that over time this harvested area
19 at this first period eventually is all
20 back in the land base when it is free to
21 grow."

22 And you've heard how when you harvest
23 something it goes into barren and scattered and it
24 obviously will regenerate and it doesn't come back into
25 the MAD land base for the purposes of determining how

1 much you can harvest in the next term until it reaches
2 free to grow.

3 So Dean Baskerville says:

4 "So that over time this harvested area
5 at this first period eventually is all
6 back in the land base when it is free to
7 grow. So if there is a problem with
8 regeneration it is captured very
9 quickly and my 40-year forecast wouldn't
10 happen, by the time you got to here it
11 had already taken the piece of land out
12 until it has been regenerated and shown
13 to be free to grow."

14 He was talking about a problem which
15 might occur in the future if you didn't -- you kept
16 that amount of property in the land base.

17 "It is, I thought, a really neat
18 protection. That is what this diagram is
19 all about."

20 Madam Chair, I apologize for not having
21 the whole transcript here and going through it ad
22 infinitum. And so what I've said might be somewhat
23 confusing, so let me just put it into English.

24 Dr. Baskerville said there's a neat
25 protection built in to the way MAD calculations are

1 done in this province, and the neat protection ensures
2 that when something gets harvested and you do the next
3 plan and you're trying to figure out how much you can
4 harvest, you can't count on wood coming from the area
5 that you just harvested, you can't count on that area
6 as part of your calculation until such time as it is
7 free to grow.

8 And that's the point that Dr. Baskerville .
9 was referring to and that's what he referred to as a
10 neat protection, and I would put it, a neat protection
11 to ensure you don't overharvest.

12 Now, Forests for Tomorrow have proposed
13 adoption of what I refer to as LTSY which is
14 long-term -- I can never remember if it's sustained
15 yield or sustainable yield, Mr. Lindgren.

16 MR. LINDGREN: Sustainable yield.

17 MR. FREIDIN: Thank you. Which is a
18 different approach to yield regulation than that
19 presently used in Ontario. They suggest that it is a
20 better approach because it provides for, or is directed
21 towards an even flow of wood volume and perhaps, most
22 importantly, would comply with the requirements in the
23 Crown Timber Act to practise sustained yield
24 management, which Forests for Tomorrow suggests MNR's
25 approach does not.

1 MR. MARTEL: Would you repeat that last
2 part, please.

3 MR. FREIDIN: What part?

4 MR. MARTEL: After Crown Timber Act?

5 MR. FREIDIN: They say that their
6 approach would comply with the requirements of the
7 Crown Timber Act to practise sustained yield
8 management.

9 They say that MNR's approach to sustained
10 yield management does not meet the requirement in the
11 Crown Timber Act. MNR of course does not agree with
12 the proposition that it is not practising sustained
13 yield in a manner consistent with that contemplated by
14 the Crown Timber Act.

15 The Crown Timber Act states in paragraph
16 6(2) as follows:

17 "The expression sustained yield means
18 the growth of timber that a forest can
19 produce and that can be cut to achieve a
20 continous approximate balance between
21 growth of timber and timber cut."

22 You will recall lengthy discussions about
23 this matter, perhaps you can think back to the
24 cross-examination of Dr. Osborn by Mr. Castrilli and
25 they were going through the Crown Timber Act and

1 dealing with that particular matter.

2 And, in my submission, the real issue
3 boils down to the answer to two questions: Is
4 sustained yield the same thing as even flow of wood? I
5 submit to you the answer to that question is it is not.

6 You'll recall that Dr. Osborn said that
7 there is a literal interpretation of Section 6(2) in
8 the Crown Timber Act, there is a literal interpretation
9 of that definition and there is a practical one.

10 You recall -- I'll review that evidence
11 in a moment. You should decide whether MNR's position
12 is correct that the literal interpretation of sustained
13 yield results in an absurd result. The literal
14 interpretation of sustained yield results in an absurd
15 result, that's the submission of MNR and, therefore, it
16 must be interpreted in a practical way having regard to
17 the reality of what timber management is all about and
18 the forest structure within which it occurs.

19 This matter is addressed in MNR argument
20 in Chapter 1.2 at pages 25 to 28 in terms of describing
21 why a literal interpretation results in an absurd
22 result. And as you see from the definition it
23 indicates that:

24 "the growth of timber that a forest
25 can produce and that can be cut to

1 achieve a continuous approximate balance
2 between growth of timber and timber cut."
3 I'm sure that didn't help you one bit.

4 A literal interpretation of the Act as
5 explained by Dr. Osborn which is even flow, that's what
6 a literal interpretation means, would result in an
7 inability to harvest much of the mature forest because
8 only a small amount of annual growth occurs in a mature
9 to overmature forest.

10 In other words, if you look at the whole
11 forest, if it's skewed to old or mature/overmature,
12 that means you've got a bunch of old trees and the
13 amount of annual growth is very slow, in fact you may
14 have decreasing growth. There are slower growth rates
15 when trees are old.

16 So what the literal interpretation of
17 sustained yield would mean that when you've got a
18 forest like the one that Ontario presently has where
19 the age-class distribution is skewed to the older
20 age-classes, the actual amount of growth going on in
21 the forest is small, the amount going on on an annual
22 basis is small compared to a forest where the age-class
23 was, say, perhaps reversed.

24 If you had the reverse situation where
25 you had a lot of young forest and not very much old you

1 would have a tremendous annual growth on an annual
2 basis compared to what you would have in the forest
3 which was skewed to the older.

4 And so if you apply the literal
5 definition of sustained yield, when you've got the
6 older forest, when you've got an age-class distribution
7 that is skewed to the older that means you've got all
8 that timber there that is in a state to be harvested
9 but you wouldn't be able to harvest it because you'd be
10 harvesting more than the annual growth.

11 If you switched it around the other way,
12 if you had a forest which was skewed to the younger
13 age-classes, you'd be able to harvest perhaps a lot but
14 to do that you would have to start harvesting in the
15 younger stands because there wouldn't be enough fiber
16 in the older stands.

17 If you harvested all the wood in the
18 older stands, you might have all kinds of growth left
19 to harvest if you're looking at this theoretical
20 balancing of harvesting the same amount as the annual
21 growth.

22 It is a well established rule of
23 statutory interpretation that you don't interpret a
24 statute in such a way that it creates an absurd result.
25 In my submission a literal interpretation of the Crown

1 Timber Act does just that.

2 During their evidence FFT makes reference
3 to the possibility that the present level of conifer
4 available for harvest cannot be sustained. They
5 describe it in different ways, but they say the present
6 level of conifer harvest cannot be sustained, they say
7 the present level of conifer available for harvest
8 cannot be sustained, they said the MAD levels will
9 decline.

10 This subject matter came up numerous
11 times throughout the hearing and hopefully the message
12 was delivered effectively that there should be no
13 surprise that in the future 30, 40, 50 years down the
14 road that the amount of conifer available for harvest
15 may be less than what it is today on certain management
16 units.

17 It's expected or it's not something which
18 is completely unusual because the age-class
19 distribution of the forests being brought under
20 management are presently skewed to the older
21 age-classes.

22 So at the present time you've got
23 old/older trees that are available for harvest and if
24 you have an age-class distribution where that is the
25 case when those older age trees die or are harvested,

1 say over 30 or 40 years, 30 or 40 years from now
2 they're going to be anywhere from -- 40 years from now
3 they will be either age 1 or age 40, they will be in
4 that range, and the amount which will be available for
5 harvest in those age-classes will depend on what we
6 have in the age-classes which are now 40 years away
7 from getting into the older age classes and the
8 age-class distribution is such that those age-classes
9 aren't there.

10 You recall the histograms that you saw
11 where you had the tall bars at the righthand side
12 saying this is what we got in these older age-classes,
13 and then you saw to the left side of the histogram that
14 a lot of the bars were not as tall. Well, as those
15 bars move across the graph to the right over 30 or 40
16 years the amount of area in the smaller age-classes
17 doesn't change it just moves over and they eventually
18 become the older age-classes.

19 So there's no surprise that the conifer
20 available for harvest in the future or that MAD levels
21 will decline in the future on those areas where there
22 are overmature age-classes at the present time.

23 So it's clear that the fact that this
24 reduction will occur in those areas is not a result of
25 present day management practices in terms that somehow

1 it's poor management practices which is going to result
2 in that occurring or result in that.

3 I should remind the Board that MNR Panels
4 3 and 4 advised the Board that the reduction will
5 occur, if that's something that was somehow hidden,
6 that was part of what their message was.

7 Secondly, every timber management plan
8 addresses the issue of future wood supply at the
9 beginning of each planning process and they do that
10 through the preparation of the MAD calculations and
11 they also provide that information in the plan.

12 I believe it was Ms. Seaborn who
13 highlighted the addition to MNR's terms and conditions
14 which now say that the MAD calculations will be
15 depicted in the plans in a graphical manner so that
16 they are more easily understood by non-technical people
17 who may be interested in that subject matter and may
18 want to read the plan. There is no attempt to hide
19 that kind of information from anybody.

20 You will also recall that the MAD runs
21 are done for every working group or forest unit on the
22 forest management unit. So that what you see is a
23 projection, not of what will occur, but what might
24 occur in relation to each of those working groups or
25 forest units over time based on certain assumptions

1 made regarding level of harvest, regeneration success
2 and the like.

3 You have heard evidence that when
4 selected MAD runs project the wood supply shortage in a
5 given working group in the future actions to address
6 those supply problems - mitigation measures if you
7 will - are considered and, where appropriate, they are
8 taken.

9 And the two examples I would refer you to
10 are examples of how one might decide to retain certain
11 species on the stump, was a term used, where that was
12 possible. You will recall Dr. Osborn and Mr. Armson
13 discussing this matter and one of the references is
14 Volume 18 of the transcript at page 3285 to 89 where
15 you may recall the discussion about somebody doing a
16 MAD run in spruce, black spruce and it looked about 30
17 or 40 years or somewhere in the future - I don't think
18 there was a specific age - in the future there was
19 going to be a shortfall because there was a gap in one
20 of the age-classes moving up the graph.

21 And they said: These are the example of
22 black spruce. Well, black spruce on a poorer site will
23 live longer than black spruce on a rich productive
24 site, and so they described how a forester would go
25 through the process of saying: So if I've got a

1 problem with black spruce down the road, is it possible
2 that if I don't harvest the spruce on the poorer site
3 but try to concentrate on the better sites that I will
4 be able to address that future supply problem because
5 the spruce on that poorer site is going to live a bit
6 longer than the spruce on the good site, so I'll save
7 those as long as I can, I will retain them on the stump
8 as long as I can.

9 And that's the evidence about a method
10 that is used to address potential future problems.

11 The other example that you heard about
12 was the possibility of increasing tending on
13 intermediate age stands, that if one saw that there was
14 a supply problem you might look sort of back and say:
15 Well, what have I got coming on stream in the future?
16 And you might ask yourself whether by intervening into
17 that stand and tending through means such as thinning
18 whether you could actually bring that stand along a
19 little faster.

20 This particular matter of wood supply and
21 MAD has been addressed in a number of answers to Board
22 interrogatories and I will refer you specifically to
23 48, 49, 52, 58, 59, 61, and 62.

24 The last issue in relation to this wood
25 supply issue that I want to address is: Does the

1 public know about these situations; that is, the
2 possible future wood supply gaps on a unit or is it
3 hidden somehow?

4 I've already referred you to the
5 depiction of MAD runs in timber management plans in a
6 graphical form to assist in making that information
7 more readily understood by non-technical people.

8 There is also a commitment by the
9 Ministry of Natural Resources in preparing a state of
10 the forest report which is described in Appendix 22 of
11 their terms and conditions which provides in Section
12 1(c) that:

13 "The State of the Forest Report shall
14 include...", and I'm quoting,
15 "...wood supply synopses and projections
16 by management unit, by region and cover
17 type and a description of typical
18 strategies used to address wood supply
19 concerns."

20 So I would submit that if one is
21 concerned about whether in fact the Ministry of Natural
22 Resources is trying to hide some of this information, I
23 would submit that it is apparent that it is not.

24 Madam Chair, that's the end of the wood
25 supply submissions that I'd like to make and it's ten

1 to twelve and I was wondering if this would be an
2 appropriate time to break, it certainly would be more
3 for me.

4 MADAM CHAIR: Let's have lunch then, Mr.
5 Freidin, and we'll be back at 1:30.

6 Thank you.

7 ---Luncheon recess at 11:50 a.m.

8 ---On resuming at 1:35 p.m.

9 MADAM CHAIR: Good afternoon, Mr.
10 Freidin. Please continue.

11 MR. FREIDIN: The next topic I would like
12 to deal with is item No. 7 and I will deal firstly with
13 the issue of actual versus potential effects. This is
14 the subject matter that I put these comments under.

15 You will find the argument of the
16 Ministry of Natural Resources in relation to
17 environmental effects on pages 251 to page 461 of our
18 written argument. That is a chapter that you will see
19 is broken down into a discussion of the effects on the
20 forest estate, the aquatic environment, the terrestrial
21 environment and social and economic environment.

22 Forests for Tomorrow have submitted that
23 MNR provided no evidence regarding actual effects and
24 that the only evidence of actual effects came from
25 Forests for Tomorrow and the Ministry of the

1 Environment.

2 Ms. Swenarchuk stated at Volume 401, page
3 68,657 to -658 as follows:

4 "Mr. Marek and Mr. Benson brought the
5 Board evidence of actual effects. Not
6 only theories of management, but photos
7 and analysis of actual plans, admissions
8 of good practices and effects as well as
9 examples of poor ones."

10 It probably should be examples of good
11 practices and effects as well as examples of poor ones.

12 "In our submission..." the quote
13 continues:

14 "In our submission that type of
15 balance was missing in the Industry and
16 MNR presentations where we found a lack
17 of willingness to accept and admit
18 the problems."

19 Our response to those suggestions are as
20 follows. That one is always looking at potential
21 effects in an environmental assessment because when we
22 are talking about undertaking activities in the future.
23 I know this is an ongoing undertaken and I will make
24 comments about that in a moment.

25 I made the point about the need to

1 address potential effects in any environmental
2 assessment as early as Volume 86 of the transcript at
3 page 14,445.

4 MNR is better able to describe potential
5 effects and ways to prevent and minimize them because
6 the undertaking has been ongoing.

7 The experience of having carried out
8 timber management and developing mitigation procedures
9 allows the minister and causes the Ministry to come
10 here and say: We have to describe what the potential
11 effects are and here is how we have determined we can
12 mitigate them so they do not become actual effects.

13 I would also submit that MNR, contrary to
14 the submission by Ms. Swenarchuk, did give valid
15 evidence, that the Ministry of Natural Resources
16 discussed both positive and negative effects in timber
17 management.

18 I would submit to you that the Ministry
19 of Natural Resources approached the task of preparing
20 evidence on effects in a reasonable way.

21 You will recall the ESSA exercise which
22 was described by Dr. McNamee in Panel No. 8. That is
23 an exercise which, it should be remembered, took place
24 before the hearing began.

25 That exercise which was at the initiative

1 of the Ministry of Natural Resources was convened to
2 bring together the best current understanding of a
3 number of experts on the effects of timber management
4 activities through the rigorous process that was
5 described to you by numerous witnesses, including Dr.
6 McNamee.

7 You may recall that participants in that
8 workshop were asked to bring to the workshop any
9 evidence such as reports, journals, articles, data that
10 would support or refute hypotheses regarding effects
11 effects, and you will see that that point is noted in
12 Exhibit 380 at page 44. I think that's the background
13 document leading up to 381 which is the first ESSA
14 Report.

15 You may also recall, Madam Chair, Mr.
16 Martel, that Forests for Tomorrow declined to
17 participate in that exercise and in that regard I refer
18 you to Volume 64, pages 10,953 to -58 and Exhibit 389
19 which was a letter from Mr. Don Huff.

20 During their submissions Ms. Swenarchuk
21 suggested that the Ministry of Natural Resources had
22 failed to provide any evidence on effects since MNR -
23 and I quote - "did no studies of actual effects of
24 harvest practices." You find that reference at Volume
25 401, page 68,743 and those are her submissions.

1 The question of actual effects was raised
2 during Ms. Swenarchuk's cross-examination of MNR Panel
3 No. 10 and her suggestion regarding the need to do
4 studies of actual effects, and you may recall that Mr.
5 Greenwood referred to the ESSA exercise during that
6 cross-examination, but Ms. Swenarchuk indicated that
7 that wouldn't satisfy her question, that wasn't the
8 kind of evidence that she thought was required.

9 Mr. Clark gave evidence on that point and
10 I quote to you what Mr. Clark stated at Volume 86,
11 pages 14,413 to -14. He said:

12 "I think if you look at the literature
13 you will find that there is a great deal
14 of research included in the documentation
15 that speaks to effects. I think the
16 point we were making when referring to
17 potential effects is that these effects
18 don't occur all the time everywhere.

19 "I think that in much of the evidence
20 that was led a very conscience effort was
21 made to summarize the extent to which
22 certain of these effects occurred."

23 MNR presented evidence regarding
24 environmental effects in each of the panels that dealt
25 with the activities of timber management. So that goes

1 right through Panel 10 through 14.

2 There was other evidence of effects
3 touched upon in other panels, but those panels had a
4 specific task to describe the effects in relation to
5 the specific activities that were being discussed.

6 Numerous experts with practical
7 experience in timber management gave evidence on behalf
8 of MNR in relation to effects and methods to prevent,
9 minimize and mitigate those effects.

10 Apropos of Ms. Swenarchuk's comment as to
11 whether the Ministry presented balanced evidence, I
12 will remind the Board of the photographs of good and
13 practices and of practices where negative effects had
14 occurred.

15 I would just remind you as an example of
16 the photographs shown by Neville Ward and Bruce Adamson
17 in Panel No. 14 where they provided evidence in
18 relation to the timber management activity of access.

19 Again, contrary to the suggestion of Ms.
20 Swenarchuk, this expert testimony was evidence in
21 relation to effects.

22 In addition, where they didn't show
23 photographs descriptions were given by those witnesses
24 of where environmental effects had occurred which were
25 not desirable. That evidence is evidence of

1 unacceptable or negative effects occurring in certain
2 situations.

3 MNR has always acknowledged that timber
4 management activities may have negative effects on the
5 environment. We make a point of making that as clear
6 as we can in our Chapter 1.11 which deals with effects.
7 If I am not mistaken, if I can think back to May the
8 10th, 1988, maybe it was May the 11th, the second day
9 of my openings remarks, I attempted to make that point
10 very clear.

11 MNR has emphasized that activities should
12 be carried out so as to prevent, minimize and mitigate
13 adverse effects.

14 On page 258 of the Ministry argument, MNR
15 sets out some important general principles which we
16 submit are important to remember or to keep in mind in
17 considering the effects of timber management.

18 I think I reviewed those briefly with you
19 when I dealt with the effects in argument-in-chief, but
20 one that I think I would highlight at this point is
21 that it is important to consider the magnitude -- these
22 are words which were first introduced I think by Mr.
23 Armson. You must keep in mind and consider the
24 magnitude, the frequency, the intensity and the
25 duration of effects when compared to the benchmark of

1 natural disturbance.

2 With that principle in mind, Madam
3 Chair, Mr. Martel, when you review the written argument
4 of the other parties, and particularly that of Forests
5 for Tomorrow, and you read the submissions that they
6 have made about effects suggesting that they are
7 negative, I ask you to pose the question in your mind
8 whether they have addressed the important matters I
9 have just referred to - magnitude, frequency, intensity
10 and duration - when they suggest that something is
11 negative or is unacceptable or whether they have not.

12 The parties at this hearing have
13 obviously heard enough evidence about effects to
14 propose specific terms and conditions in relation to
15 them. There has been clear evidence on that matter.

16 I submit that the Board should not accept
17 that a term and condition should be imposed just
18 because someone raises the spectre of an effect and MNR
19 does not have quantified - and I emphasize quantified -
20 data to refute the concern.

21 I would ask that the Board judge the need
22 for terms and conditions based on all the evidence
23 including that of experienced experts and professionals
24 and not feel that it is the only act where there has
25 been some quantified data to establish propositions put

1 forward by witnesses.

2 I would like now to make a few
3 submissions on the subject matter of observed
4 undesirable effects. This deals with one of the
5 matters of discussion over the last few days,
6 particularly arising from some of the submissions of
7 the Ministry of the Environment.

8 During their oral argument, MOE agreed
9 with the Ministry of Natural Resources' proposal to
10 collect information on observed undesirable conditions,
11 but they were critical of how they saw MNR using that
12 information, that Ms. Seaborn stated in MOE's view that
13 MNR is gathering information for the sake of gathering
14 information and commented that information was not
15 worth gathering if it was not going to be used.

16 Based on this characterization of MNR's
17 proposed condition 64(b), MOE has made a number of
18 proposals of their own as to how and where information
19 on observed undesirable conditions should be used and
20 reported.

21 MNR strongly disagrees with MOE's
22 characterization of the Ministry of Natural Resources'
23 position on information about observed undesirable
24 conditions and takes the position that it is not just
25 gathering information for the sake of gathering

1 information.

2 I would like to very briefly review MNR's
3 proposals in relation to how that information which is
4 collected as part of MNR's proposed area inspection
5 program, which is described in MNR condition 64(a),
6 will be reported and used.

7 One, area inspection reports record a
8 description of any observed undesirable conditions
9 which appear to be related to timber management
10 activities. That will be found in condition 64(b) and
11 64(c)(iii).

12 Secondly, area inspection reports are
13 reviewed by appropriate MNR professional staff,
14 including the district manager, to determine what
15 follow-up action, if any, is required.

16 This is one of the main points of the
17 program; that is, not only to learn from this
18 information, but to take action to address such
19 conditions where they are observed.

20 You will recall the area inspection
21 reports also record the actions required to address
22 such conditions and the actions taken, and you will
23 find that in condition 64(d). It records the actions
24 required to address such conditions and the actions
25 taken.

1 The fourth point. A summary of the area
2 inspection reports is included in the annual report at
3 the FMU level and in the Report of Past Forest
4 Operations. You will find that provision in Appendix
5 18(1)(h) and in Appendix 8, paragraph 1(c).

6 Fifth. A discussion of problems and
7 issues which arose during implementation of the
8 previous timber management plan is required in the
9 Report of Past Forest Operations, RPFO, including a
10 description of any undesirable conditions observed
11 during the previous five years. You will find that
12 provision in Appendix 8, paragraph 1(k).

13 Information on observed undesirable
14 conditions collected during area inspections is being
15 used to guide or contribute to the development of
16 recommended timber management strategies to address
17 problems and issues identified in the RPFO. You will
18 see that that is one of the specific uses to which it
19 is to be put. You will find that provision provided
20 for in Appendix 8, part 1, sub 1.

21 Information from the area inspection
22 report is not just collected and left on the shelf. As
23 the Board is aware, the Report of Past Forest
24 Operations is available to the public at the outset of
25 timber management planning for the unit. In addition,

1 the RPFOs from the previous three timber management
2 plans are also available.

3 It is my submission that MNR's proposals
4 provide for the use of this information for planning
5 purposes and also ensure that the public has access to
6 the information. I would refer you to Appendix 4, part
7 A, paragraph 1(b)(i) and 1(c)(i).

8 In addition, MNR has proposed that
9 implementation manuals will be regularly reviewed to
10 determine the need for revision, amalgamation and new
11 manuals.

12 Information gathered through the area
13 inspection program, including records regarding
14 undesirable observed effects, will contribute to that
15 review and will be one of the factors considered in
16 determining the need for revisions. The authority for
17 that proposition is term and condition 77(c).

18 It is further the submission of the
19 Ministry of Natural Resources that its proposed terms
20 and conditions do include reasonable reporting
21 requirements in relation to information on observed
22 undesirable conditions and that MNR does make use of
23 that information both locally and at the provincial
24 level.

25 I would like to make a few short

1 submissions in relation to the interim direction
2 concerning site productivity.

3 You are aware and you will recall the
4 evidence given about the long-term study into site
5 productivity. In argument, the Ministry of the
6 Environment took the position that their condition
7 21(c) should be imposed by the Board since MOE
8 concluded that MNR's long-term site productivity
9 studies will not provide the necessary information to
10 address site productivity concerns until after the term
11 of the proposed approval period.

12 In making this argument, MOE appears to
13 have overlooked the evidence presented by Mr. Greenwood
14 in MNR Reply Panel 5. The written material was in MNR
15 Reply Panel 2, but he appeared as a witness on MNR
16 Reply Panel 5 and gave evidence in relation to the
17 Ministry's commitment to develop interim direction
18 concerning site productivity. This commitment is set
19 out in MNR's reply statement of evidence No. 3, as well
20 as in MNR's written argument at page 784.

21 Mr. Greenwood spoke to that matter during
22 his oral evidence as follows:

23 "Those involved in designing the
24 long-term site productivity studies
25 through the use of local knowledge want

1 to determine the relative distribution
2 and abundance of sites with potentially
3 low productivity.

4 "The reasons being that they feel it
5 is important to determine the
6 significance of those sites in the
7 province and then based on the
8 significance recommend an interim set of
9 good practices using existing knowledge
10 and expertise, literature and expert
11 opinion.

12 "They plan to not only look at the
13 potential where effects could take place,
14 but the significance of that potential
15 locally, regionally and probably
16 provincially, recognizing that if it is
17 only a very small number of sites where
18 this potential exists the issue maybe
19 isn't as great as some may think."

20 In other words, MNR has specifically
21 addressed the issue of interim direction concerning
22 site productivity and has stated its intention to
23 develop a report that describes good practices on sites
24 where there is a concern and to summarize that
25 information and include it in an environmental

1 guideline as being the best information available on
2 that topic for use in planning and operations.

3 I would, therefore, submit that MOE's
4 proposal for an interim approach to addressing the
5 issue of long-term site productivity is unnecessary and
6 should not be accepted.

7 I would like to make a number of
8 submissions in relation to item No. 9, planning process
9 matters. I will be returning to one matter in relation
10 to the effects/effectiveness issue and that is the
11 matter of silvicultural effectiveness. I will do so
12 after I deal with the issue of planning matters.

13 The first matter that I want to respond
14 to is the submission by Mr. Hanna who warned you that I
15 was going to get up in reply argument and provide you
16 with a list of changes and he said don't be misled, Mr.
17 Freidin is going to do that, but remember, he said,
18 nothing has really changed. He said the focus has not
19 changed.

20 He spoke about comparisons he had made
21 about the former content of timber management plans
22 going back to the early 80s and even before and he said
23 the former content of those plans hasn't changed very
24 much.

25 Well, I am not going to provide you with

1 a list of all the changes. I think Ms. Seaborn in her
2 submissions provided you with a partial list of some of
3 the many changes that the Ministry of Natural Resources
4 has made to its terms and conditions in response to
5 concerns raised during the hearing, including concerns
6 raised by her client, the Ministry of the Environment.

7 I would only want to comment on Mr.
8 Hanna's concern that the focus has not changed, that
9 the former content of timber management plans does not
10 seem to have changed very dramatically at all over the
11 years.

12 My short answer to that is that the focus
13 has not changed in the way he wants because it is still
14 a timber management plan. It is not a forest
15 management plan which is the undertaking, with the
16 greatest of respect, he attempts to describe it as
17 something different is what the proposal of the
18 Coalition is.

19 The second topic I want to address is
20 optional harvest areas and additional road corridors.
21 Well, first just optional harvest areas.

22 As you know, MNR opposes standard
23 planning requirements for optional harvest areas as
24 would be required by the Ministry of the Environment.
25 I refer you to our written argument at pages 524 to 533

1 and 599 to 611.

2 At page 870 you will find the wording for
3 MNR's counter-proposal, if you will, regarding how
4 optional harvest areas might be identified in some
5 cases but not as a standard mandatory requirement in
6 all cases.

7 I would also refer you to MNR's term and
8 condition 28 which indicates that an explanation will
9 be provided as to how the selection criteria resulted
10 in the choosing of the areas identified on the areas
11 selected for harvest map.

12 I am not going to revisit the submissions
13 I made in argument-in-chief on this matter. I just
14 want to respond to one specific comment made during the
15 submissions by the Ministry of the Environment.

16 In her argument, Ms. Seaborn directed you
17 to some evidence from Mr. Bax that suggests that the
18 things that they are proposing are already done during
19 planning and Mr. Bax states at Volume 376, page 65,396
20 to -397, he states the following:

21 "The Ministry of the Environment is
22 asking for just a simple explanation to
23 the public so they can determine that
24 they didn't select this particular area
25 for no particular reason, they looked at

1 some alternatives like this is the one
2 and this is the reason for it. Why on
3 earth did you pick just that one area."

4 The Ministry of Natural Resources points
5 out that there is a very significant difference between
6 explaining why you chose a particular area and a
7 requirement to lay out and do some undetermined level
8 of planning for a series of optional harvest areas to
9 show the choices that could be made in the future
10 stages of planning.

11 MOE says it is already done and it is
12 really very simple. MNR would respond that that is
13 incorrect on both counts. It is not already done and
14 it isn't really very simple.

15 The MNR asks the Board to make it
16 explicit that the level of planning that would be
17 required if MOE optional harvest areas became a
18 requirement would be onerous and would result in
19 planning for areas that one would never go to and
20 should not, therefore, be made a mandatory requirement
21 for all timber management planning exercises, that the
22 Board find that MNR's counter-proposal, which I
23 indicated is described in the written argument
24 especially at page 530 to -31. In terms of that you
25 should also look at page 609 and for the specific

1 wording or rationale for that proposal look at page
2 870.

3 As I referred you to earlier, you should
4 also look at condition 28 which is the term and
5 condition which indicates that there will be an
6 explanation how the selection criteria lead to the
7 allocated areas.

8 MR. MARTEL: I think you said that you
9 shouldn't have to do some of this because there were
10 certain areas that you would never use anyway and never
11 go to.

12 MR. FREIDIN: Bad wording.

13 MR. MARTEL: It may be bad wording, but,
14 you see, if you are never going to go to it why is it
15 even an optional area for consideration?

16 MR. FREIDIN: A bad choice of words when
17 I said you wouldn't go to it. I am saying you wouldn't
18 go to it in that five-year term.

19 What happens under the MOE proposal is
20 that you would have to plan not only for an area equal
21 to the maximum area that you could harvest in the five
22 years, you would have to go and identify areas over and
23 above that.

24 As you have heard in my explanation
25 before, to have a reasonable planning exercise in

1 relation to harvest areas you have to show alternative
2 for roads, the alternatives for areas of concern and if
3 you accept that proposition you would end up having a
4 planning exercise in relation to a number of areas for
5 that five-year term where you are just not going to be
6 going.

7 MR. MARTEL: Why would you have to show
8 anything except those things that are feasible during
9 that five-year term, taking all the other factors into
10 consideration, what the market demands are and
11 everything?

12 Why has this thing gone beyond anything
13 that's going to be considered for the five-year and why
14 aren't we just looking at things that one will
15 consider?

16 I think what Mr. Kennedy is saying is
17 these were just merely scheduling decisions. I have
18 difficulty understanding why we say that we have to do
19 so much and select "x" number of areas that are going
20 to be considered for the next -- surely you will only
21 consider the things that are going to be utilized in
22 those five years in areas that are going to be accessed
23 maybe by the roads that exist already and that one
24 isn't going to go into a whole Pandora's box of options
25 just for the sake of considering options.

1 MR. FREIDIN: That is the question that
2 MNR keeps asking MOE, about why one would have to plan
3 for more areas than the areas which are required to
4 carry out operations for the next five years.

5 If you know the maximum area that you can
6 operate in in the five years and you know how much is
7 involved in planning properly for those areas in terms
8 of alternative roads, areas of concern and the like,
9 the question MNR asks: Why would you identify more
10 areas than that and with an accompanying requirement to
11 plan for the road going to them, the areas of concerns
12 in relation to them because in MNR's view that would be
13 planning for the sake of planning.

14 You will recall, Mr. Martel, that MOE
15 have suggested that it would not be necessary to do
16 detailed planning in relation to all of the optional
17 harvest areas, but I ask you to remember my submissions
18 to you in this regard in my argument-in-chief and that
19 is that the Ministry of Natural Resources does not
20 believe that there would be a meaningful planning
21 exercise, a meaningful involvement of the public in
22 terms of choosing between an array of optional harvest
23 areas unless the public saw in relation to each of
24 those areas the road alternatives, the identifications
25 of areas of concern, the planning in relation to areas

1 of concern with the identification of alternative
2 prescriptions and the like.

3 MR. MARTEL: One more question. In
4 considering your five-year proposal, the area you are
5 going to operate, are there not areas that you look at
6 during that five-year consideration and rule them out
7 and say: Well, we are not going there for a variety of
8 reasons, in the process now when it goes on?

9 I mean, you simply do not go to the five
10 areas, let's say the five areas you are going to
11 harvest, and say: These are the five areas you are
12 going to harvest. You have to look at the factors of
13 where you are going to harvest within the five-year
14 framework.

15 I am not talking about going outside that
16 consideration beyond that five-year framework. I am
17 talking about consideration of what you are going to do
18 within the five-year framework. There must be
19 something you look at and for a variety of reasons it
20 is dismissed. It might be a cottage, it might be a
21 tourist operation, it might be some other factor.

22 I guess that is what is worrying me.
23 Whenever you choose these things there must be a number
24 of considerations over a number of different sites that
25 you look at and accept some and rule others out for a

1 variety of reasons.

2 MR. FREIDIN: The first response is the
3 approach of the Ministry of Natural Resources is not to
4 allocate away our problems, that we have a planning
5 process which is designed to be able to address
6 concerns and values which could be potentially affected
7 by timber management and that if the process works in
8 one area it will work in the other.

9 It necessarily complicates things if you
10 start allocating away from problems and just put
11 everything off and let things build up for the next
12 five years or the five years after that.

13 If I could then deal with the matter of
14 additional road corridors open to the public. It is
15 another submission of the Ministry of the Environment.

16 With respect to the issue of opened and
17 closed roads, you already have our argument at pages
18 533 to 551 of our written argument. I will highlight
19 pages 541 to 543.

20 In a nutshell, MNR submits that it is not
21 always practical to locate a road which meets MOE's
22 requirements and, therefore, a mandatory requirement to
23 do that in all cases - and that is the way their term
24 and condition reads - does not make sense.

25 I would like to make some submissions on

1 the subject matter of silvicultural ground rules and
2 logging methods.

3 MOE have changed term and condition 21(a)
4 to require the specification of logging method and
5 alternative silvicultural treatment packages.

6 MOE suggests that this be accepted for
7 three reasons, that the activities are linked, that the
8 choice of logging method dictates options for renewal
9 and they also say have different environmental effects;
10 thirdly, that they also provide for monitoring in a key
11 link in the data management system that they, MOE, are
12 proposing.

13 In relation to this proposal and perhaps
14 others as well, but this one I think you, Mr. Martel,
15 said: Why is MNR reluctant to go ahead with this one.

16 Mrs. Koven you asked the question of
17 whether this provision would limit forester's
18 flexibility.

19 In the written argument, MNR advises that
20 while there is a limited number of alternative methods
21 available for each of the timber management activities
22 of harvest, renewal and tending, the number of
23 combinations available, that is the packages, is
24 expediential.

25 In addition, MNR does not see the point

1 in a requirement to specify the logging method in all
2 circumstances in many cases up to five years prior to
3 harvest. You will see some written submissions in this
4 regard at page 507 to 508 of MNR's written argument.

5 MNR does not dispute that the activities
6 are linked, nor does MNR dispute that the actual
7 logging method used influences the follow-up
8 treatments.

9 MNR is clearly concerned about
10 flexibility and the amount of planning required at the
11 five-year level. In evidence Mr. Bax said: "It is
12 really very flexible."

13 MOE indicated that they want to make sure
14 that the foresters know that the harvest methods
15 influence the regeneration method. Well, they know
16 that already. They don't need this system to teach
17 them that.

18 In terms of the comment about "it is
19 really very flexible", Mr. Bax -- sorry, Madam Chair,
20 if I could just have one moment.

21 I think it would be appropriate to
22 characterize Mr. Bax's evidence as saying that it is
23 flexible because you can just list all of the possible
24 combinations and MNR responds: Where does that get
25 you.

1 You would require options for each
2 activity, for each working group, for each site type in
3 order to have this flexibility.

4 It must be kept in mind that MOE's
5 proposal is that these options be put in packages.
6 Just so we are clear. When we are talking about
7 packages, that means where you have identified one
8 logging method, one silvicultural system, one renewal
9 method, one tending method.

10 Now, MNR already does identify in its
11 silvicultural ground rules in its Table 4.11 the
12 preferred silvicultural treatment package.

13 The evidence is that the first sequence
14 of treatment that you read across the page from left to
15 right in Table 4.11 is, in fact, put in there as a
16 package. That's the preferred one.

17 It is that preferred package which now
18 has got incorporated into the suggestion that it will
19 be tied to standard site types, whether it would be
20 identified on maps to give people the best idea of what
21 the Ministry is planning to do on that site. So that's
22 a package.

23 Now, the minute you get down after that
24 and you start saying: Well, start showing all of the
25 other individual packages that you might have to use on

1 that site depending on a host of factors, then you are
2 having to put down a package on the second line, on the
3 third line and on the fourth line and the evidence that
4 you have on this matter is that it would require to
5 have the flexibility that Mr. Bax suggests.

6 So that you would not have to come back
7 and seek an amendment to your plan. You would end up
8 having to show a tremendous number of silvicultural
9 packages for each site type and that is, in MNR's
10 submission for the reasons I have indicated,
11 unacceptable.

12 MNR does, after it says here is the
13 preferred silvicultural package, list other treatments.
14 Not packages, but other treatments for which it seeks
15 approval for that particular site type. It only seeks
16 approval for those kinds of treatments that make
17 silvicultural sense on those kinds of site types, but
18 it says to be reasonable, to have a workable system we
19 will tell you that if we cannot actually implement our
20 preferred silvicultural packages, that linked number of
21 treatments, here are the other treatments from which we
22 must choose to come up with the actual silvicultural
23 package that gets implemented on the ground.

24 A few remarks, if I might, Madam Chair
25 and Mr. Martel, on the matter of information centres.

1 I am going to try and characterize for you the
2 differences between the proposals of MNR, MOE and OFIA
3 in relation to information centres, and particularly
4 the information that must be provided at each of them.

5 I preface my remarks by reminding the
6 Board that the Illing Report incorporates an agreement
7 that there be two information centres. Not one, not
8 three, but two.

9 The disagreements or the difficulties we
10 were having seemed to be how much information at which
11 information centre. As I explained to in
12 argument-in-chief, MNR have taken the position that at
13 the first information centre that is where MNR will
14 present information, including alternative road
15 corridors, areas selected for operations.

16 That's where they will show the
17 preliminary planning for areas of concern down to the
18 point where they have analysed and identified
19 alternatives, but have not made a decision on exactly
20 what is going to happen there.

21 The same thing with the roads. They show
22 the alternatives, but at the first information centre
23 they do not say that this is the decision that we have
24 made. This is the road that we are going to do and
25 this is the road we are going to construct.

1 After receiving the input, comments and
2 suggestions from the public who attend that first
3 information centre, MNR goes away, relooks at the
4 alternatives that they had presented, looks at the
5 information they have received from the public and
6 makes a final recommendation.

7 They choose the preferred road corridor,
8 they identify the preferred prescription for the area
9 of concern and, of course, as you have heard, the
10 preferred alternative might not be one of the original
11 road corridors; for example, it might be that a member
12 of the public after seeing where the alternative road
13 corridors are says: I think this location is better
14 and if that seems appropriate, then that road corridor
15 would be selected.

16 So at the second information centre, in
17 MNR's proposal, the public come back, having seen the
18 information that I have described to you at the first
19 and having had a chance to have their input, they come
20 back and and they see what the actual decision has
21 been, they see how their input has been addressed.

22 Now they will not see three road
23 corridors going to every area, they will see one and we
24 will say: There is the one that we have chosen and
25 there will be a rationalization and explanation as to

1 why that was chosen and if an individual person made a
2 suggestion why that particular suggestion was or wasn't
3 accepted.

4 Now, the Ministry of the Environment
5 states at page 115 of their written argument as
6 follows:

7 "A careful review of the MNR proposal
8 for Appendix 4 in reply evidence
9 in that regard demonstrates that the
10 content of the information presented to
11 the public at the first and second open
12 houses is virtually identical."

13 Now, Madam Chair, I would ask you to come
14 to the conclusion based on the description that I have
15 given you about the first and second information centre
16 of MNR's proposal that they are not virtually
17 identical.

18 In relation to OFIA, very quickly, as you
19 heard before, MOE are recommending that at the first
20 information centre that you show the optional harvest
21 areas. You have my submissions on why for that to be a
22 meaningful exercise for the public you have to do all
23 that exercise for all those optional harvest areas.

24 If you added their optional harvest areas
25 to the first information centre, there is no question

1 it would be different. It would be much larger and
2 much more onerous for the reasons I have indicated.

3 Now, the OFIA, their proposal is at the
4 first information centre there are no alternatives
5 shown in relation to roads or AOCs.

6 The second information centre that the
7 OFIA propose is one where the draft plan gets
8 presented. When I say the draft plan gets presented,
9 that means that the decision is what they get to see.
10 They do not get to see any road alternatives. They get
11 to see just the road which has been chosen.

12 They do not get to see any analysis of
13 alternatives in relation to AOCs as suggested by MNR.
14 They get to see the decision which has been made in
15 relation to that. So the public never get to see the
16 alternatives in relation to those matters because it
17 was never presented at the first information centre and
18 they are not shown at the second.

19 I am just asking you, Mr. Martel and
20 Madam Chair, from amongst those options, that you are
21 going to choose from amongst the three, maybe you will
22 come up with something else, but I would suggest that
23 you accept the approach by MNR, that MNR believes that
24 it is important that before the final decisions are
25 shown that people do get to see the kinds of

1 alternatives, get to comment on the kinds of
2 alternatives which MNR presents at the first
3 information centre.

4 Madam Chair, it is 20 to 3:00. I have
5 got two more matters I can deal with in terms of
6 planning fairly quickly, I believe, bump-up and timber
7 management planning and environmental assessment index.

8 I have no preference, whether you want to
9 break now or...

10 MADAM CHAIR: Let's take our break now,
11 Mr. Freidin.

12 ---Recess at 2:40 p.m.

13 ---On resuming at 3:00 p.m.

14 MADAM CHAIR: Mr. Freidin, are you ready
15 to wind up your final argument in reply?

16 MR. FREIDIN: I was wondering whether you
17 were going to say "do you wish to proceed". I was
18 going to ask you to say it again because I won't hear
19 it again.

20 Two final matters in relation to planning
21 matters. The first one, bump-up. I am going to try to
22 move through these a bit more quickly than the other
23 ones.

24 Firstly, concern regarding the proposals
25 of FFT in relation to bump-up. I think there may end

1 really not being much of a difference, but the way
2 their terms and conditions are worded there is.

3 The FFT term and condition indicates, in
4 Appendix 15, Section 4 of their terms and conditions,
5 basically says that when a bump-up request occurs the
6 plan, the timber management plan, shall not be approved
7 until the minister has made a decision.

8 As you are aware, without the plan being
9 approved none of the activities in the plan can
10 proceed.

11 It is anticipated that when there are
12 bump-up requests it will be not in relation to the
13 plan, but some part of the plan, a particular activity;
14 for instance a specific road. It really would be an
15 unfortunate result, an undesirable result if because
16 there is a dispute about a specific road that all the
17 other operations that are dealt with in the plan
18 anywhere on the unit couldn't proceed. Now, that's the
19 effect of the way FFT's term and condition is written.

20 During Mr. Lindgren's argument, however,
21 he made a statement, the following statement, he said:

22 "No operations should be
23 permitted..." This is when there is a
24 bump-up request.

25 "No operations should be permitted in

1 ... areas covered by bump-up requests..."

2 I emphasize covered by bump-up requests,
3 "...until a final decision has been made
4 by the Minister of the Environment.

5 Otherwise, the reasons for the bump-up
6 request may well be rendered mute."

7 You will find that in Volume 402, page
8 68,920.

9 Now, MNR doesn't have any real dispute
10 with that submission because in that submission it said
11 the operations can continue -- pardon me, it says the
12 areas covered by the bump-up request and in that area
13 no operations should continue.

14 Now, to give effect to that, if that is
15 the true position of FFT, there does not appear to be
16 any difference and it would just require using the
17 wording of our term and condition because MNR term and
18 condition basically provides or meets the intent, I
19 would submit, of what Mr. Lindgren said in argument;
20 that is, the area covered by the bump-up request -- in
21 the area covered by bump-up request no operations
22 should be permitted.

23 In relation to a proposal by OFAH made in
24 Volume 405 at pages 69,379 to -382, you will recall Mr.
25 O'Leary made a suggestion that on a bump-up request

1 about the possibility of avoiding the preparation of an
2 individual environmental assessment and the avoidance
3 of a government review process when an individual
4 environmental assessment was ordered after a successful
5 bump-up request.

6 In my submission it is clear that the
7 proposition of the proposal being put forward by OFAH
8 is premised on the assumption that a timber management
9 plan is an individual environmental assessment.

10 It is premised on the assumption that the
11 timber management plan is an environmental assessment,
12 and on that basis Mr. O'Leary argues that if it is an
13 individual environmental assessment, then why do we
14 have to prepare another document. You have already got
15 an individual environmental assessment.

16 It is the position of the MNR that timber
17 management plans are not individual environmental
18 assessments and, therefore, if there is a bump-up
19 request and the Minister of the Environment grants the
20 bump-up request and thereby says: MNR, prepare an
21 individual environmental assessment, it would be an
22 unfortunate and unacceptable result that when the
23 Minister of Natural Resources was told to prepare an
24 individual environmental assessment which it had not
25 already done to say: Look, you don't prepare an

1 individual environmental assessment, just the timber
2 management plan and that will be the basis upon which
3 the Minister of the Environment will assess your case.

4 Mr. Martel, you look curious.

5 MR. MARTEL: Yes.

6 MR. FREIDIN: An individual environmental
7 assessment might require there to be more information
8 to address a specific problem than the amount of
9 documentation in the timber management plan and,
10 therefore, MNR must have the opportunity to put in the
11 documentation it believes is necessary to address the
12 concern raised by the person who has requested the
13 individual environmental assessment.

14 In relation to the last plan item I want
15 to refer to, and that is the timber management planning
16 environmental assessment index proposed by MOE, in
17 their evidence the ministry said that they were not
18 making this a proposed term and condition and it is
19 suggested that MNR and MOE were discussing this matter,
20 and that is correct, but now it has shown up in their
21 terms and conditions.

22 MNR does not have a problem with the idea
23 of providing an index if its purpose is to make it
24 easier for someone to find what they are looking for in
25 the timber management plan.

1 MNR has some concerns regarding the
2 specific wording of the term and condition and requests
3 that if the Board believes that such an index is
4 useful, and MOE and MNR seem to be in agreement that it
5 would be useful, that we ask you to simply require an
6 index to the environmental assessment components be
7 prepared and that you not specify the wording of that
8 index.

9 The next subject matter I want to address
10 is the not on the list and I want to address some
11 reference to Dr. Balsillie's evidence. You will recall
12 that Northwatch referred to some comments by Dr.
13 Balsillie in their opening remarks. You will find
14 those remarks at 67,842 to -43 of the transcript.

15 FFT cite Dr. Balsillie's comment at
16 Volume 394, page 67,897 that MNR will be a long way
17 down the road in implementing forest management by
18 1995.

19 FFT appeared to equate this comment to
20 saying that MNR are going to do what FFT are proposing
21 in their terms and conditions, particularly term and
22 condition 124 where they recommend an integrated forest
23 management planning process and, therefore, somehow
24 that it is appropriate for the Board to order this
25 change because government are going to do it anyway.

1 I will respond as follows. MNR submitted
2 in its Panel No. 1 through Mr. Monzon and Mr. Douglas
3 that there are different approaches to achieving or
4 implementing integrated resource management and that it
5 does not necessarily involve planning for all resources
6 at the same time in one planning process.

7 Mr. Balsillie in Volume 394, page 67,889
8 was asked the following question and gave the following
9 answer to Mr. Lindgren in cross-examination.

10 "Q. Now, in light of your answer, Dr.
11 Balsillie, I take it that you would agree
12 with me that if you want to practice
13 wholistic management you need a wholistic
14 or integrated plan, not just a timber
15 plan?

16 "A. Well, I think that the terms and
17 conditions call for looking at the
18 requirements of other management plans;
19 For instance, whether it is a fisheries
20 management plan or wildlife management
21 plan or whatever on those units. So
22 within the processes which are available
23 to us today our terms and conditions
24 indicate that we have to do that."

25 I would suggest to you that Dr. Balsillie

1 is not accepting or agreeing to the specific terms and
2 conditions of Forests for Tomorrow, that that approach
3 be an abandoned and the Board accept term and condition
4 124.

5 You will recall as well the numerous
6 initiatives that Dr. Balsillie referred to, all
7 directed towards integrated management with the hope
8 that they will result in improved integrated
9 management.

10 I would suggest, however, that it would
11 be inappropriate to interpret Dr. Balsillie's evidence
12 as referred to by Forests for Tomorrow as saying
13 Forests for Tomorrow's view as to how to integrate is
14 what the Ministry is contemplating as of 1995.

15 Now, for the purpose of the argument,
16 Madam Chair and Mr. Martel, let's assume for the moment
17 that he was referring to the FFT approach as described
18 by FFT, just for the purpose of argument, the fact that
19 MNR is or may be planning to undertake something in the
20 future does not make it the subject matter of the
21 hearing; that is, it does not change this hearing from
22 one about timber management into one about forest
23 management and it does not confer jurisdiction on the
24 Board to order something just because the government
25 seemed to be going in a certain direction.

1 The next matter I would like to address
2 is to go back to the effects/effectiveness topic and
3 speak for a moment on the matter of silvicultural
4 effectiveness.

5 MOE have suggested that by adopting their
6 terms and conditions on this subject matter one will
7 immediately be able to have improved silvicultural
8 effectiveness reporting.

9 It appears to MNR that the Ministry of
10 the Environment has failed to acknowledge the length of
11 time and, indeed, the period over which the treatments
12 are actually conducted and the further time gap between
13 the end of the implementation of the entire treatment
14 package and the time you are able to obtain any
15 meaningful results in terms of silvicultural
16 effectiveness.

17 In relation to this time aspect, I think
18 it might be appropriate to look at the time required to
19 implement the MOE proposal for one timber management
20 plan only.

21 First, I would ask that you not overlook
22 that there is a division of each of the working groups
23 by general standard site type which will be done during
24 revision of the silvicultural guides; that is, over the
25 next two or three years this general standard site type

1 issue will be completed. Reference, MNR condition
2 78(a).

3 When your next timber management plan
4 which will take about another two years, over that
5 period of time you would develop prescriptions by
6 general standard site types and you would do so in a
7 series of alternative packages, is how they have
8 proposed it to be done.

9 After that period of time you actually
10 carry out the treatment package which commences with
11 harvesting in year one, but to include obviously
12 treatments in years two or three or four on that area
13 harvested.

14 The package, as you recall, is the series
15 of treatments on any particular area; it is the
16 harvest, it is the renewal, it is the tending. So you
17 haven't finished actually implementing your package
18 until you have carried out the tending treatments.

19 So now we are down the road that many
20 more years and you would, of course, continue to do
21 that for every year of the plan. So assuming that it
22 took you five years or four years to do your treatment
23 package, if it was the third year when you did it, it
24 would be seven years from the time you started your
25 plan. In the fourth year of the plan it would be even

1 much later than that.

2 Then comes the time to assess what has
3 occurred in terms of regeneration as a result of
4 implementing your treatment packages.

5 Now, we know they take place at least
6 after establishment -- to go back, I would like to
7 refer to these as the regeneration assessments which
8 would be done on that particular area in question.

9 They take place at least after
10 establishment. Even survival of planted trees is not
11 an assessment of the treatment package. To assess the
12 results of a treatment package you must assess them at
13 the free to grow stage which takes place five to ten
14 years after all - and I emphasize all - of the
15 treatments.

16 You won't assess effectiveness of all of
17 the treatments for the trees harvested even in year one
18 during the term of the plan. In other words, year one
19 you harvest, you aren't even at the end of that plan
20 going to be at that point in time where you can
21 actually assess the effectiveness of the package that
22 was implemented in that plan.

23 In summary, you won't be able to get any
24 meaningful information from MOE's proposal until the
25 end of the approval period of this environmental

1 assessment, at the earliest.

2 You heard MNR proposals regarding
3 silvicultural effectiveness and particularly you heard
4 about the initiatives that the Ministry is undertaking
5 through development of the STEMS program that was
6 described by Dr. Osborn in Reply Panel No. 3.

7 Now, MOE are correct that because that
8 particular program is being developed for use in a GIS
9 environment it will take time to develop and implement
10 it across the province.

11 You also heard Dr. Osborne's evidence to
12 make improvements to the SIS/SAS system for use in the
13 interim. The interim between now and the time that
14 STEMS becomes operational across the entire area of the
15 undertaking.

16 You will recall the appeal from Dr.
17 Osborn not to put in place a different interim solution
18 than the one he is contemplating with SIS and SAS which
19 will have a different record keeping system and which
20 would divert attention from the important work that he
21 is engaged in and that is developing the STEMS program.

22 We don't believe that MOE's proposal will
23 give us any meaningful result any earlier than what
24 MNR's proposal will provide.

25 The next subject matter I want to

1 address, Madam Chair, are the submissions of Mr.
2 Colborne on behalf of Grand Council Treaty No. 3.

3 Ms. Blastorah is going to provide or
4 circulate a document. It is statement of fact and law
5 in response to the written and oral argument of Grand
6 Council Treaty No. 3. We are providing this document
7 to you. It is provided in the Board's order concerning
8 reply argument April the 17th, 1991.

9 The statement of fact and law establishes
10 or provides the support for MNR's submission to you
11 that this Board does not have the jurisdiction to grant
12 Grand Council Treaty No. 3 the relief it is seeking as
13 set out in their terms and conditions.

14 There is also a case book which goes
15 along with this which refers to a number of the cases
16 which are referred to in the statement of fact and law.

17 MADAM CHAIR: Excuse me, Mr. Freidin.
18 Why didn't you give us this material during your
19 argument when Mr. Colborne could have had the
20 opportunity to look at it before he summed up?

21 MR. FREIDIN: Firstly, it is a document
22 which is in reply to his argument, not one which was in
23 anticipation of it.

24 Secondly, it was necessary to obtain
25 instructions. We couldn't do it any earlier than we

1 have because during those submissions it was necessary -
2 to obtain instructions not only from the Ministry of
3 Natural Resources, but from the Attorney General for
4 the Province of Ontario and from the Ontario Native
5 Affairs Secretariate in relation to the submission in
6 which we are going we make and which are contained
7 within it.

8 MR. BERAM: If I might ask Mr. Freidin
9 just one question in relation to that. I assume that
10 Mr. Colborne will be circulated with a copy of that
11 document.

12 MR. FREIDIN: Certainly. We have
13 additional copies here for any people that would like a
14 copy. We will distribute them later.

15 I should advise, Madam Chair, that I
16 don't intend to make any submissions at all in relation
17 to this document.

18 Madam Chair, during the argument on
19 October the 26th, 1992, counsel for FFT made certain
20 suggestions that the MNR timber class EA team, referred
21 to as case managers, were in some way acting contrary
22 to the wishes of the Minister of Natural Resources.

23 You will recall that counsel for Forests
24 for Tomorrow referred to MNR documents such as
25 Direction 90's, statements made regarding the

1 Ministry's position on sustainable forestry and
2 references to certain evidence given by Dr. Balsillie
3 as part of MNR Reply Panel 4.

4 In particular, in the context of an
5 argument that the Ministry should have based its case
6 on various approaches, counsel for Forests for Tomorrow
7 stated that the Ministry did not do so and she stated
8 as follows:

9 "Most importantly, it is clear that
10 the Ministry's case managers' views on
11 this question and the Industry view are
12 not shared by the current Minister of
13 Natural Resources or senior managers such
14 as Dr. Balsillie."

15 Madam Chair, Mr. Martel, I am here
16 representing the Ministry of Natural Resources. I can
17 advise you in unequivocal terms that the case put
18 forward by MNR case managers and legal counsel acting
19 for the Ministry of Natural Resources has been entirely
20 consistent with the instructions we have received from
21 the most senior levels of management throughout this
22 process.

23 I would also point out that the evidence
24 of Dr. Balsillie is consistent with this position. He
25 made the position of senior management of the Ministry

1 of Natural Resources very clearly when we stated as
2 follows:

3 "I think that my presence is an
4 indication of the importance of the
5 timber management EA to the senior
6 management of the Ministry of Natural
7 Resources. At the latest negotiation
8 session this year staff were directed to
9 find ways of managing legitimate concerns
10 hopefully to reduce the length of this
11 hearing and the argument time and having
12 all the major players at the table to
13 place those other issues on the table and
14 the ways of the minister handling them in
15 other forums."

16 There is a commitment from MNR to manage
17 these items in other forums and, indeed, in February of
18 this year the minister met with all the parties to this
19 hearing with regard to the role of a sustainable
20 forestry program in managing a number of those issues.
21 The references in the transcript are at Volume 394,
22 page 67,782 and 67,849.

23 Dr. Balsillie expressed the confidence of
24 senior managers and the public servants involved in
25 this hearing and he stated, I quote:

1 "MNR's terms and conditions were
2 developed by qualified and experienced
3 staff representing a variety of
4 background, not only forestry, but
5 wildlife, economics, et cetera, et
6 cetera."

7 He stated:

8 "We feel that our terms and conditions
9 are based on scientific evidence and that
10 they are environmentally sound."

11 The reference for that is Volume 394,
12 page 67,783.

13 Madam Chair, Mr. Martel, I would like to
14 ask you for the last time whether there are any
15 questions.

16 MADAM CHAIR: No, we do not have any
17 questions. We have heard everything you have had to
18 say, Mr. Freidin.

19 MR. FREIDIN: With that being the case,
20 Madam Chair, on behalf of all of the people involved in
21 this hearing on behalf of the Ministry of Natural
22 Resources, including all of the witnesses who appeared
23 before you, we thank you for listening and we wish you
24 well in the task before you.

25 That is the end of the reply argument of

1 the Proponent, and thank you very much.

2 MADAM CHAIR: Thank you very much, Mr.
3 Freidin.

4 Mr. Martel and I have decided that we are
5 going to have the last word at the hearing. We finally
6 conclude the proceedings of the timber management
7 hearing joined in our hard earned satisfaction and
8 shared relief.

9 On this hearing's very first day we
10 opened the session by saying the Board would try to
11 expedite and facilitate matters so that, in the words
12 in the transcript, we are able to complete this hearing
13 in a time period which is not totally out of control.

14 That's what we said. Four and a half
15 years later we wish we could say that modest goal had
16 been achieved or, failing that, offer some insight into
17 how or why it escaped us.

18 Our experience together must raise
19 questions about whether the adversarial process of
20 legal advocates, cross-examination and rigid rules so
21 vital to the search for truth in our justice system has
22 been adopted usefully to the job of making public
23 policy, but this is for the future, for those who will
24 decide how this process should be reformed.

25 For Mr. Martel and myself, our job is big

1 enough; to make use of the education we have received
2 from you and your clients and your witnesses to produce
3 a decision we hope will guide the use of northern
4 Ontario's Crown forests in as wise and productive a
5 manner as we can.

6 This decision is not about policies and
7 laws in the abstract. It is about sustainability and
8 protection of the forests under our shared ownership.
9 It is about jobs and the survival of communities and
10 about all of our needs and uses of the forest.

11 The environmental assessment process has
12 been honoured by the participation of hundreds of
13 people at this hearing; the Indian communities, the
14 forest workers and lumbermen and their industries and
15 their unions, trappers, tourist operators, anglers and
16 hunters, foresters and our public servants and
17 advocates of environmental causes, among others.

18 We have learned a great deal about our
19 forest, the people who live with it and earn their
20 living from it, the people who study its subtlety and
21 beauty, the people who care so deeply that its richness
22 is not wasted. It is a great responsibility to know
23 that our decision must be worthy of them and all they
24 have shared with us, and yet is bound to leave many of
25 them or even all of them unsatisfied.

1 We are going to write a decision that is
2 clear, concise and accessible to anyone who wants to
3 read it, so that people who are unhappy with the
4 outcome can at least understand why we have
5 disappointed them.

6 If we are unable to deal exhaustively in
7 legal terms with every issues that has arisen during
8 this hearing it will be because we are trying to cut to
9 the heart of the case in a way that should have
10 happened sooner.

11 Mr. Martel and I are content that we have
12 achieved at least two of our objectives in the conduct
13 of the hearing. We succeeded in making this a
14 provice-wide enterprise with a focus in northern
15 Ontario where it belongs.

16 We have also shown, as other panels
17 before us, that the Environmental Assessment Board does
18 everything within its power to listen to people and
19 help individuals and groups who need support to get in
20 front of us with their submissions, but any further
21 comments from me will only prolong a hearing that most
22 will agree has lasted long enough.

23 We were given a job to do and with small
24 exception we did not give up and we got it done.

25 Thank you all for your patience and

1 courtesy, for your tenacity and dedication to this
2 process. This ends the timber management class
3 environmental assessment hearing.

4
5 ---Whereupon the hearing was concluded at 3:35 p.m.

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E R R A T A

to Volume 401
October 26, 1992

Page 68,802 and Index (v)

EXHIBIT NO. 2322 should read NO. 2323.

